CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 263

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER,

vs.

CLARENCE BEZUE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED JULY 28, 1931

CERTIORARI GRANTED OCTOBER 19, 1931

(36,077)

(36,077)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 263

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER,

vs.

CLARENCE BEZUE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX

	Original	Print
Record on appeal to court of appeals of New York	1	1
Statement under Rule 234	1	1
Notice of appeal	2	2
Order appealed from	4	3
Notice of motion to amend judgment	5	3
Affidavit of Frederick J. Rock	6	4
Complaint, attached to affidavit of Frederick J. Rock	8	5
Summons	11	7
Complaint	12	7
Answer	15	9
Plaintiff's bill of particulars	17	10
Extract from clerk's minutes	21	13
Judgment	23	14
Order denying motion for new trial	24	14
Statement of evidence	26	15
Appearances of counsel	26	15
Colloquy	26	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1931

	Original	Print
Testimony of Dan W. Rich	29	18
Dr. Moses A. Stivers	41	26
Dr. John A. Faiella	70	48
Dr. Ellis M. Black	117	84
Clarence Bezue	144	105
Raymond Quick	241	184
John Kiernan	247	190
Raymond B. K. Jennings	265	205
Dr. Walter Schmitz	303	235
Offers in evidence	313	243
Motion to dismiss	314	244
Testimony of Raymond B. K. Jennings (recalled)	317	246
Lewis Dickson	340	265
Raymond B. K. Jennings (recalled)	343	267
Dr. Ellsworth Eliot, Jr.	368	287
Dr. Archibald P. Evans	396	309
William M. Donahue	404	315
Jacob Hessberger	411	321
Harold F. McCoy	418	327
John Norris	420	330
Thomas White	422	331
Raymond B. K. Jennings (recalled)	424	332
Girardo Poto	427	335
Motion for directed verdict	430	338
Charge to jury	433	340
Requests to charge	445	348
Verdict	452	353
Stipulation as to exhibits	455	355
Statement re Plaintiff's Exhibits Nos. 8 and 9	456	355
Plaintiff's Exhibit 13—Subpœna duces tecum	456	356
Plaintiff's Exhibits 14a, 14b, 14c—Three papers called monthly report of work done on locomotives at Readville shop	458	360
Plaintiff's Exhibits 15a, 15b—A group of sheets being the daily consolidated engine movement log record	464	366
Plaintiff's Exhibit 16—Daily consolidated engine log records from 8-23-29 to 9-3-29, inclusive	468	423
Defendant's Exhibit A—Picture showing kind of truck operated by Clarence Bezue	470	447
Defendant's Exhibit C—Photograph of roundhouse at Maybrook	472	449
Defendant's Exhibit D—Photograph of the lathe in which the wheels were on the morning of the accident	474	451
Defendant's Exhibit F—Letter, addressed to Mr. Gibbs, dated November 17, 1929	476	453
Defendant's Exhibit G—Letter, addressed to Mr. Gibbs, dated December 5, 1929	478	455
Defendant's Exhibit I—Three yellow sheets: Boiler washing record	480	457

	Original	Print
Defendant's Exhibit J—Photograph of the exterior of the Whiting hoist building	482	461
Defendant's Exhibit J—Five yellow sheets showing work to be done on major items	484	463
Defendant's Exhibit K—Photograph of the tracks facing the Whiting hoist building	486	469
Defendant's Exhibit L—Photograph of the track alongside the Whiting hoist building	488	471
Defendant's Exhibit M—Photograph of tracks leading into the roundhouse	490	473
Defendant's Exhibit N—Photograph of a pair of main driving wheels	492	475
Defendant's Exhibit O—Photograph of a pair of main driving wheels	494	477
Defendant's Exhibit P—Photograph of an engine of the same type as engine No. 3221	496	479
Stipulation settling case	498	481
Order settling case	498	481
Stipulation waiving certification	499	481
Order filing record in appellate division	499	482
Affidavit of no opinion	500	482
Notice of appeal to the court of appeals	501	483
Judgment of affirmance	503	484
Order of reversal on appeal from judgment	505	485
Stipulation and consent to reduction of judgment	507	486
Opinion, appellate division	508	487
Affidavit of no opinion	508	487
Stipulation settling case	510	488
Stipulation waiving certification	510	488
Opinion, Hubbs, J., court of appeals	511	489
Dissenting opinion, O'Brien, J., court of appeals	517	493
Remittitur, court of appeals	520	495
Order on remittitur of court of appeals	522	496
Judgment on remittitur of court of appeals	524	497
Order granting stay of execution	526	499
Affidavit of Edward R. Brumley	527	499
Bond on appeal (omitted in printing)	533	
Clerk's certificate (omitted in printing)	535	
Order allowing certiorari	536	503

[fols. a–1]

IN COURT OF APPEALS OF NEW YORK

CLARENCE BEZUE, Plaintiff-Respondent,
against
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant-Appellant

STATEMENT UNDER RULE 234

The above-entitled action was commenced by the service of a summons and complaint on May 26th, 1930. Issue was joined by the service of defendant's answer on June 16th, 1930.

Plaintiff appeared by Thomas J. O'Neill, his attorney, and the defendant appeared by John M. Gibbons, its attorney.

There has been no change of parties or attorneys since the commencement of this action.

The issues thus joined came on for trial before Hon. John E. Mack and a jury at a Trial Term of the Supreme Court, Putnam County, on September 24th, October 2nd, 3rd, 9th and 10th, 1930, and resulted in a verdict in favor of the plaintiff and against the defendant for the sum of $60,000.

Thereafter, the defendant appealed to the Appellate Division, and the judgment and order were reversed upon the law and the facts and a new trial granted, costs to abide the event unless plaintiff, within ten days from service of a copy of the order herein, stipulate to reduce the verdict to the sum of $50,000; in which event the judgment as so modified and the order are unanimously affirmed, without costs. Plaintiff so stipulated, and the judgment entered on October 20th, 1930, was modified by reducing the verdict to the sum of $50,000. As so modified, the judgment and order denying motion for a new trial were unanimously affirmed, without costs. Judgment on order of modification on appeal from judgment was entered in the office of the Clerk of the County of Putnam on March 31st, 193[illegible] amount of $50,222.50. Defendant appealed from the o[illegible] of modification on appeal from judgment; and also from the judgment entered on said order.

[fol. 2] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

CLARENCE BEZUE, Plaintiff-Respondent,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant-Appellant

NOTICE OF APPEAL

SIRS: Please take notice that the defendant herein hereby appeals to the Appellate Division of the Supreme Court, Second Judicial Department, from a judgment entered herein in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, in favor of the plaintiff and against the defendant in the sum of Sixty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($60,222.50); and the defendant also appeals from an order denying its motion for a new trial, entered herein in the office of the Clerk of the County of Putnam on the 28th day of October, 1930; and from the whole and each and every part of said judgment and order.

Please take further notice that the defendant also appeals from the order entered in the office of the Clerk of [fol. 3] the County of Putnam on the 6th day of November, 1930, denying its motion for an order directing that the judgment in amount of Sixty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($60,222.50), entered in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, be modified and amended by striking therefrom the item of One Hundred Dollars ($100.00), interest on the verdict of Sixty Thousand Dollars ($60,000.00) from October 10th, 1930, to October 20th, 1930, and the defendant also appeals from each and every part of said order.

Dated New York, November 10th, 1930.

Yours, etc., John M. Gibbons, Attorney for Defendant-Appellant. Office and Post Office Address: Room 3843 Grand Central Terminal, New York City.

To Thomas J. O'Neill, Esq., Attorney for Plaintiff-Respondent, 1 Court Street, White Plains, N. Y.; Edward S. Agor, Esq., County Clerk, Putnam County, Carmel, New York.

[fol. 4] IN SUPREME COURT OF NEW YORK

ORDER APPEALED FROM—NOV. 3, 1930

Present: Hon. William F. Bleakley, Justice.

The defendant by notice of motion dated the 22nd day of October, 1930, having moved to amend the judgment herein by striking therefrom the sum of $100, interest on the verdict from the date of rendition of the verdict to the date of the entry of judgment, and the same having come on to be heard now on reading and filing said notice of motion, the affidavit of Frederick J. Rock, verified the 22nd day of October, 1930, in support of said motion, the briefs of the respective parties, and after having heard John M. Gibbons, attorney for the defendant, Frederick J. Rock, of counsel, in support of said motion, and Thomas J. O'Neill, attorney for the plaintiff, Charles D. Lewis, of counsel, in opposition thereto, and the Court having rendered and filed its decision,

Now, on motion of Thomas J. O'Neill, attorney for the plaintiff, it is

Ordered that the motion be and the same hereby is in all respects denied.

Enter.

William F. Bleakley, Justice of the Supreme Court.

[fol. 5] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

NOTICE OF MOTION TO AMEND JUDGMENT

SIR: Please take notice that upon the pleadings herein and the annexed affidavit of Frederick J. Rock, verified the 22nd day of October, 1930, and all the papers and proceedings herein, a motion will be made before this Court at a Special Term thereof, to be held at the County Court House thereof, in the City of White Plains, New York, on the 24th day of October, 1930, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard, for an order directing that the judgment in amount of $60,222.50, entered herein October 20th, 1930, be modified and amended by

striking therefrom the item of $100, interest on the verdict of $60,000, from October 10th, 1930, to October 20th, 1930.

Dated New York, October 22nd, 1930.

Yours, etc., John M. Gibbons, Attorney for Defendant. Office and Post Office address: Room 3843 Grand Central Terminal, New York City.

To Thomas J. O'Neill, Esq., Plaintiff's Attorney, 1 Court Street, White Plains, N. Y.

[fol. 6] In Supreme Court of New York, Putnam County

Affidavit of Frederick J. Rock

City and County of New York, ss:

Frederick J. Rock, being duly sworn, deposes and says that he is an attorney and counsellor-at-law, and employed in the office of John M. Gibbons, the attorney for the defendant herein; that he is familiar with all the proceedings heretofore had herein.

Upon information and belief, this is an action to recover damages account personal injuries alleged to have been sustained by the plaintiff while in the employ of the defendant. The complaint, copy of which is annexed hereto, alleges a cause of action under the Federal Employers' Liability Act. The action was tried under the Federal Employers' Liability Act before a jury in the Supreme Court, Putnam County, on October 2nd, 3rd, 9th and 10th, 1930, and resulted in a verdict for the plaintiff in amount of $60,000. Costs were taxed in amount of $122.50, and judgment entered on October 20th, 1930, in amount of $60,222.50. Included in this judgment was an item of $100, covering interest on the verdict from October 10th, 1930, the date said verdict was rendered, to October 20th, 1930, the date of entry of judgment.

Deponent respectfully contends that to allow interest on the verdict from the date it was rendered to the date of the entry of judgment, is error. The recovery was exclusively under the Federal Statute, which does not expressly allow interest to be added to the verdict, and that Statute dis-

[fol. 7] places the State Statute permitting interest to be added.

Wherefore deponent respectfully requests an order of this Court directing that the judgment in amount of $60,222.50, entered October 20th, 1930, be modified and amended by striking therefrom the item of $100 allowed on the verdict from the date rendered to the date of entry of judgment, and for such other and further relief as in the premises may be just.

That no other or prior application for the relief requested has been made by this defendant.

Frederick J. Rock.

Sworn to before me this 22nd day of October, 1930. Adolph W. Antilmann, Notary Public, Bronx Co., No. 31, Reg. No. 3113. Cert. filed in N. Y. Co. 225, Reg. No. 1-A-308; Cert. filed in Westchester Co. Term expires March 30, 1931. (Seal.)

[fol. 8] SUPREME COURT, PUTNAM COUNTY

COMPLAINT, ATTACHED TO AFFIDAVIT OF FREDERICK J. ROCK

The plaintiff complaining of the defendant alleges as follows upon information and belief:

1. That at all the times hereinafter mentioned the defendant was and now is a Connecticut State common carrier railroad corporation, and as such operates a railroad in Putnam County, and on the 2nd day of September, 1929, the plaintiff was injured on the defendant's right-of-way, tracks and railroad property at Maybrook, Orange County, N. Y.

2. That at the time the plaintiff was injured he was in the defendant's employ.

3. That at said time and place the defendant was then and there engaged in interstate commerce between the different States of the United States.

4. That plaintiff's regular employment and labor for the defendant while in its employ was in interstate commerce between the different States of the United States.

5. That at the time and place plaintiff was injured, he was then and there engaged in interstate commerce between the different States of the United States.

[fol. 9] 6. That on said date and at said place the defendant maintained a round-house with tracks, pits, motor trucks and equipment, used for the stabling, inspection, maintenance and minor running repairs of locomotives engaged in interstate commerce between the different States of the United States.

7. That plaintiff's regular employment consisted in the operation of one of said motor trucks in said round-house and other work in and about said round-house, in and on said locomotives so engaged in interstate commerce between the different States of the United States.

8. That on said date and at said place, the plaintiff was injured without any negligence on his part, but solely by reason of the wrongful and negligent acts and omissions of the defendant's officers, agents and employees, and by the negligent defects in the defendant's ways, works, plant and equipment, and the defendant's servants, agents or employees then and there engaged in moving, upon one of the tracks and pits of said round-house, a certain pair of main engine driving wheels, so negligently and carelessly conducted themselves as to cause the same to roll backward instead of forward and strike the plaintiff's body, causing him to be precipitated to the tracks, and the defendant, its officers, agents and servants failed to formulate, promulgate and enforce proper rules and regulations for the safe conduct of such work, and failed to properly block said driving wheels so as to prevent the same from moving back-
[fol. 10] ward, and by reason of the aforesaid negligent acts and omissions of the defendant, the plaintiff sustained serious, painful and permanent injuries to his body, health, organs, nerves and nervous system, and he was permanently injured internally and externally, and he was rendered sick, sore and disabled and permanently will so remain, and plaintiff lost and will lose his wages at his usual vocation, and has spent and will be obliged to spend sums of money in endeavoring to cure himself, all to his damage in the sum of $100,000.

Wherefore plaintiff demands judgment against the defendant in the sum of $100,000, together with the costs and disbursements of this action.

Thomas J. O'Neill, Attorney for Plaintiff, 1 Court Street, White Plains, N. Y.

[fol. 11] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

[Title omitted]

SUMMONS

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated White Plains, N. Y., May 26, 1930.

Thomas J. O'Neill, Attorney for Plaintiff. Office and Post Office address: 1 Court Street, White Plains, N. Y.

[fol. 12] WP1901

IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

COMPLAINT

The plaintiff complaining of the defendant alleges as follows upon information and belief:

1. That at all the times hereinafter mentioned the defendant was and now is a Connecticut State common carrier railroad corporation, and as such operates a railroad in Putnam County, and on the 2nd day of September, 1929, the plaintiff was injured on the defendant's right-of-way,

tracks and railroad property at Maybrook, Orange County, N. Y.

2. That at the time the plaintiff was injured he was in the defendant's employ.

3. That at said time and place the defendant was then and there engaged in interstate commerce between the different States of the United States.

4. That plaintiff's regular employment and labor for the defendant while in its employ was in interstate commerce between the different States of the United States.

5. That at the time and place plaintiff was injured, he was then and there engaged in interstate commerce between the different States of the United States.

[fol. 13] 6. That on said date and at said place the defendant maintained a round-house with tracks, pits, motor trucks, and equipment, used for the stabling, inspection, maintenance and minor running repairs of locomotives engaged in interstate commerce between the different States of the United States.

7. That plaintiff's regular employment consisted in the operation of one of said motor trucks in said roundhouse and other work in and about said round-house, in and on said locomotives so engaged in interstate commerce between the different States of the United States.

8. That on said date and at said place, the plaintiff was injured without any negligence on his part, but solely by reason of the wrongful and negligent acts and omissions of the defendant's officers, agents and employees, and by the negligent defects in the defendant's ways, works, plant and equipment, and the defendant's servants, agents or employees then and there engaged in moving, upon one of the tracks and pits of said round-house, a certain pair of main engine driving wheels, so negligently and carelessly conducted themselves as to cause the same to roll backward instead of forward and strike the plaintiff's body, causing him to be precipitated to the tracks, and the defendant, its officers, agents and servants failed to formulate, promulgate and enforce proper rules and regulations for the safe conduct of such work, and failed to properly block

said driving wheels so as to prevent the same from moving backward, and by reason of the aforesaid negligent acts and [fol. 14] omissions of the defendant, the plaintiff sustained serious, painful and permanent injuries to his body, health, organs, nerves and nervous system, and he was permanently injured internally and externally, and he was rendered sick, sore and disabled and permanently will so remain, and plaintiff lost and will lose his wages at his usual vocation, and has spent and will be obliged to spend sums of money in endeavoring to cure himself, all to his damage in the sum of $100,000.

Wherefore plaintiff demands judgment against the defendant in the sum of $100,000, together with the costs and disbursements of this action.

Thomas J. O'Neill, Attorney for Plaintiff, 1 Court Street, White Plains, N. Y.

[fol. 15] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

ANSWER

The defendant above named, by its attorney, John M. Gibbons, for its answer to the complaint herein.

First. Denies, upon information and belief, each and every allegation contained in paragraphs designated "3," "4," "5," "7" and "8" of the complaint herein.

Second. Denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph designated "6" of the complaint herein.

For a separate answer and defense, the defendant alleges, upon information and belief:

First. That whatever injuries the plaintiff may have received at the time and place mentioned in the complaint herein resulted from his failure to exercise due care and diligence in the performance of his duties, his own negligence and carelessness contributing thereto.

For a second separate answer and defense, the defendant alleges, upon information and belief:

First. That whatever damages or injuries the plaintiff [fol. 16] sustained at the time and place mentioned in the complaint herein were sustained while he was at work in an employment which he entered knowing the risk thereof, and assumed the same by entering into and continuing said employment.

Wherefore the defendant demands judgment dismissing the complaint herein, with costs.

John M. Gibbons, Attorney for Defendant. Office and Post Office Address: Room 3843 Grand Central Terminal, New York City.

[Verified June 9, 1930.]

[fol. 17] In Supreme Court of New York, Putnam County

WP1901

[Same Title]

Bill of Particulars

The plaintiff hereby gives the following particulars in amplification of the allegations of the complaint upon information and belief:

1. Plaintiff fell on his back between the rails and on the ties, which ties were partly covered with cinders, and sustained a transverse fracture of the 5th lumbar vertebra at or about the base of the spinus process; some diffuse crushing of the posterior aspect of the 1st, 2nd and 3rd sacral segments; injury to the bony spine from the 5th lumbar vertebra down through the sacral and coccygeal vertebrae; plaintiff also suffers from a severe shock and injury to his nerves and central and general nervous systems; plaintiff also received an injury to the nerve trunks and tracts innervating the right extremity and particularly the lower portion thereof; plaintiff suffers from a partial loss of sensation of the right leg and foot, and a partial loss of motion of the right leg and foot, being unable to lift it, and

compelled to drag it as he walks; plaintiff also has great tenderness and soreness and pain along and in the region of the spine from the 5th lumbar vertebra down, and particularly on the right side; plaintiff is compelled to wear a plaster cast and corset, and is unable to stand or walk without the same, unless he stands by holding onto some object; plaintiff suffers a partial loss of motion of the spine and is unable to bend forward, or backward or sideward to [fol. 18] any great degree; plaintiff also suffers from loss of sleep, and was compelled to wear crutches for a period of 4 months after leaving the hospital, and a cane, and now one cane; plaintiff also suffered an injury to the muscles of the back in and about the areas above described, and the muscles and nerves of the right leg, and is unable to lay flat on his back, and his right hip is slightly higher than the left and slightly larger.

2. All of which injuries plaintiff is informed and believes are permanent in their nature.

3. Plaintiff was compelled to expend $13 for a cast; $2.00 for cotton for the cast; $6.00 for walking canes; $54 for trips to the hospital; and has not as yet received any bill from the hospital or doctors, and is unable at the present time to state what said bill will be and how much of said bill plaintiff will be compelled to pay, and how much of the said bill defendant has already paid.

4. Plaintiff was confined to the hospital from September 3, 1929, to November 2, 1929, and then confined to his home for about 4 months. He was in a bed while at the hospital approximately 9 weeks, and after he returned home he was in and out of bed for approximately 6 weeks, being compelled to lie down and rest during the day.

5. Plaintiff is a railroad motor truck operator earning $3.56 per day with a bonus of approximately $2 to $3 per week, and has been prevented from working since the 2nd day of September, 1929, and has been informed and believes that he will never be able to do railroad work again.

[fol. 19] 6, 7, and 8. The negligent acts and omissions complained of are that defendant's servants were negligent in taking away the back blocks from behind the engine wheels without notice or warning to the plaintiff and allowing the engine wheels to roll backward toward the plaintiff. The

defendant was also negligent in failing to provide sufficient men to handle said engine wheels, and keep them from rolling backward under all the facts and circumstances existing at the time of the plaintiff's injury. Defendant also failed to furnish sufficient and competent men who knew how to move said wheels and failed to promlugate proper regulations and communicate them to plaintiff in relation to the said wheels and how same were to be moved and when and who was to remove the blocks from in back of said wheels, and the defendant's labor foreman failed to observe the warning given to him by defendant's other employees in relation to removing the back blocks from the said engine wheels and removing said back blocks when he was told not to do so.

Dated September 16th, 1930.
Yours, etc., Thomas J. O'Neill, Attorney for Plaintiff, 1 Court Street, Whte Plains, N. Y.

[Verified September 16, 1930.]

[fol. 20] DECISION

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM

[Same Title]

White Plains, N. Y.

Mr. Justice BLEAKLEY:

I am satisfied that the statute allowing interest on verdict to date of entry of judgment applies to any action. The fact that the cause of action is based upon a Federal Statute does not deprive the State Court of the right to so provide.

W. F. B., J. S. C.

Please call for Exhibits and Briefs.
Dated October 30, 1930.

Chas. J. F. Decker, Clerk.

[fol. 21] SUPREME COURT OF NEW YORK, PUTNAM COUNTY.

EXTRACT FROM CLERK'S MINUTES

Present. Hon. John E. Mack; Thomas J. O'Neill, John M. Gibbons.

The following witnesses were examined for plaintiff: Dr. W. W. Rich and Moses H. Stern, M. D.

Recess to October 2nd, 1930.

Reconvened October 2nd. After examination the following jurors were accepted and sworn: Charles Akin, Solomon B. Heady, George Lang, James Ingersoll, James Hewitt, Mortimer B. Townsend, Orson H. Lyon, William J. Dring, John Grady, Frank George, Joseph Richie, Chauncey G. Craft.

Witnesses: Plaintiff, John Farella, Ellis Moore. Black, Clarence Bezue.

[fol. 22] Recess to October 3rd, at 10 A. M.

Reconvened October 3rd, with examination concluded of Clarence Bezue.

Testimony of Raymond Quick read in evidence. John Kiernan.

Testimony of Raymond B. K. Jennings read in evidence.

Raymond B. K. Jennings.

Witness for Defendant Walter A. Schmitz, M. D.

Recess to October 9, 1930.

October 9, Reconvened pursuant to recess.

Plaintiff rests. Defendant moves to dismiss and nonsuit on four grounds. Denied. Exception on each ground.

Witness for Defense: Raymond V. K. Jennings, Lewis Dickson, Raymond V. K. Jennings, Ellsworth Eliott, Jr., Archibald P. Evans, Wm. M. Donohue, Jacob Hessburger, Harold F. McCoy, John Morris, Thomas White, Raymond V. K. Jennings, Gerardo Poto.

Defendant rests.

Recess to October 10, 10 A. M.

[fol. 23] October 10, reconvened pursuant to recess.

Counsel summed up.

Judge charged Jury and they retired to their room and returned into Court with a verdict for the plaintiff for Sixty Thousand Dollars ($60,000).

A true extract from the minutes.

Edward S. Agor, Clerk. (Seal.)

IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

JUDGMENT

Judgment entered October 20th, 1930.

The issues in the above-entitled action having been tried before Hon. John E. Mack and a jury in Trial Term, on the 2nd, 3rd, 9th and 10th days of October, 1930, and the jury having rendered a verdict in favor of the plaintiff and against the defendant for the sum of $60,000, and the costs of the plaintiff having been taxed at the sum of $122.50.

Now, on motion of Thomas J. O'Neill, attorney for the plaintiff, it is

Ordered and adjudged that the plaintiff recover of the [fol. 24] defendant the sum of $60,000 damages, together with $— costs and disbursements, and interest on said verdict in the sum of $100, from the date of rendition thereof, to wit, October 10, 1930, amounting in the aggregate to the sum of $60,222.50, and that plaintiff have execution issue therefor.

Enter.

Edward S. Agor, Clerk.

IN SUPREME COURT OF NEW YORK

ORDER DENYING MOTION FOR NEW TRIAL—Oct. 27, 1930

Present: Hon. John E. Mack, Justice.

The issues in the above-entitled action having been regularly brought on for trial before Mr. Justice John E. Mack and a jury at a Trial Term of the Supreme Court, held in and for the County of Putnam, at the County Court House in Carmel, New York, on September 24th, October 2nd, 3rd, 9th and 10th, 1930; and the said issues having been duly tried and submitted to the jury; and the jury having rendered a verdict in favor of the plaintiff, Clarence Bezue, for the sum of Sixty thousand Dollars ($60,000) [fol. 25] against the defendant, The New York, New Haven and Hartford Railroad Company; and the Justice presiding at the trial aforesaid having at the same term and

immediately after the rendition of said verdict entertained a motion on his minutes on behalf of the defendant to set aside said verdict and for a new trial because said verdict was contrary to the law, contrary to the evidence and on all the grounds specified in Section 549 of the Civil Practice Act, except inadequacy; and after hearing N. Otis Rockwood, of counsel for the defendant, in support of said motion, and Thomas J. O'Neill, attorney for plaintiff, in opposition thereto, it is

Ordered that said motion be, and the same hereby is, in all respects, denied; and

It is further ordered, on motion of said counsel for defendant, plaintiff not opposing, that after service of a copy of the judgment herein upon the attorney for the defendant herein, with notice of entry thereof, execution under said judgment be stayed for a period of thirty days, and that the defendant have thirty days from said date in which to make and serve case and exceptions herein.

Enter.

John E. Mack, Justice.

[fol. 26] In Supreme Court of New York, Putnam County

Statement of Evidence

Before Mr. Justice Mack, J. S. C.

Carmel, N. Y., September 24th, 1930.

Appearances of Counsel

Thomas J. O'Neill, Esq., attorney for the plaintiff; Charles Lewis, Esq., of counsel.

John M. Gibbons, Esq., attorney for the defendant; Edward R. Brumley and N. O. Rockwood, Esqs., of counsel.

Colloquy

Mr. Rockwood: If your Honor please, the doctor who took the X-rays of this plaintiff in the Middletown Hospital, September, 1929, immediately after the accident, and

again in May, 1929, whom I interviewed myself on Saturday at Middletown and asked to be present at the trial, departed for Canada very unexpectedly and suddenly and without warning on Sunday night.

The Court: Well, when you talked to him, did he say he would be here?

Mr. Rockwood: Yes, it was understood that he was to be here. I sent a subpœna up for him Monday to make doubly sure, and that was the answer.

The Court: Is this Middletown, New York?

Mr. Rockwood: Middletown, New York. I went over there myself on Saturday so as to see the doctor. The [fol. 27] hospital declined to let me see the X-rays personally—they are hospital records.

The Court: The X-rays are there?

Mr. Rockwood: The X-rays then, I was told, were under subpœna by the plaintiff and would be produced in court. Now, I don't feel that I am justified in going ahead without Dr. Schmidt, the roentgenologist, who took those X-rays and made his reports on those X-rays.

The Court: Maybe Mr. O'Neill intends to call him.

Mr. O'Neill: We have subpœnaed the hospital records, including these X-rays, and I understand, although I have not seen them or asked to see them, that these films are here, together with the hospital records and, I assume, readings of them. Also, we have subpœnaed the attending physician who treated the man in that hospital. Now, we see no reason why that particular roentgenologist should be here. These X-rays, of course, are as available to the defendant as they are to me.

The Court: Well, the only object of having him here, as I look at it, would be to read the X-rays.

Mr. Rockwood: And confirm the reading that he made last May for the purpose of the attending physician.

Mr. O'Neill: It don't make any difference, of course, whether he confirms it or not. I don't know what his readings were. But the X-rays that were taken will be here and they can be read by any competent man. We will have an X-ray man here today who will read them; and they must have an X-ray doctor who can read them, too. From the [fol. 28] nature of the X-rays I shouldn't figure that anybody would have any trouble reading them that was competent.

The Court: Of course, I don't know what the injury is or what the claim is. Sometimes it takes an expert to read one of them. It seems to me that if there is a stipulation here that these X-rays be put in evidence—Is there the doctor's reading of them?

Mr. Rockwood: The important feature of it was the report made by the doctor.

The Court: Are the X-rays here?

Mr. O'Neill: Yes.

The Court: It seems to me if they will stipulate that they can be received in evidence with the readings of them, Mr. Rockwood, I think you would then be bound to get another expert who would interpret them for you.

Mr. O'Neill: I see no necessity that we should stipulate in advance to some reading of them that wouldn't be competent even if they had their doctor here.

The Court: No, he would have to testify. They say they are surprised here because he agreed to come and for some reason left for Canada. Now, if that were so I would grant the adjournment on condition that they would pay your expenses here, but I wonder if that is necessary.

Mr. O'Neill: First let us find out whether it is necessary and whether he would be any good to them if they got him here. Let us assume for the moment that we have taken a jury, and then we will put this man on from the hospital first of all. I want to let this man from the hospital go away, and then we will see what we have.

The Court: Let us get a stipulation on the record then. [fol. 29] It is stipulated that the representative of the Horton Memorial Hospital of Middletown, New York, shall be placed on the stand and examined, and that on the trial his examination on the stand and the exhibits offered by him may be offered with the same force and effect as though a jury was empaneled and his evidence was offered before the jury. Is that entirely satisfactory, gentlemen?

Mr. O'Neill: Yes.

Mr. Rockwood: Entirely satisfactory.

DAN W. RICH, a witness for the plaintiff, being called and sworn, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. You are assistant superintendent of some hospital, are you?
A. Yes, sir.

By the Court:

Q. At the Horton Memorial Hospital of Middletown, N. Y.?
A. Yes.

By Mr. O'Neill:

Q. And have you, pursuant to subpœna served by plaintiff's attorney's office on that hospital, produced here certain X-ray films and hospital records with reference to the plaintiff in this case, Mr. Bezue?
A. Yes, sir.
Q. And you have produced here an envelope which reads [fol. 30] "Mr. Bezue. No. 475. 4 films, pelvis and lumbar spine." Dated "9-2-29: Case 842."
A. Yes, sir.

Mr. O'Neill: I ask that the envelope be marked now as Plaintiff's Exhibit 1 for Identification and later on we will mark the 4 films 1-a, b, c and d, for identification only.

(Envelope marked Plaintiff's Exhibit 1 for Identification.)

By Mr. O'Neill:

Q. Now, have you also produced here certain X-ray films taken on 10-8-29, "No. 593. Mr. Bezue. 3 films, pelvis and lumbar spine. Case 842."
A. Yes, sir.

(Envelope marked Plaintiff's Exhibit 2 for Identification.)

By Mr. O'Neill:

Q. And also an envelope said to contain 4 films, dated 5-1-30, "Clarence Bezue, Case 842. Lumbar spine, coccyx. No. 1099"?

A. Yes.

(Envelope marked Plaintiff's Exhibit 3 for Identification.)

By Mr. O'Neill:

Q. And envelope numbered 582, containing 2 films, sacrum and pelvis, dated 9-25-29, Case 842?

A. Yes, sir.

(Envelope marked Plaintiff's Exhibit 4 for Identification.)

[fol. 31] By Mr. O'Neil:

Q. And envelope No. 683, 3 films, 11-1-29, lower back, Case 842?

A. Yes, sir.

(Envelope marked Plaintiff's Exhibit 5 for Identification.)

By Mr. O'Neill:

Q. And No. 1665 and 1235, apparently dated 2-28-30, being an envelope said to contain 2 films, "Remarks: Portable. Chest. Case 842."

A. Yes, sir.

(Envelope marked Plaintiff's Exhibit 6 for Identification.)

By Mr. O'Neill:

Q. You have also produced here a file folder marked "842. Clarence Bezue," from the Elizabeth Horton Memorial Hospital, 60 Prospect Street, Middletown, New York?

A. Yes.

(File marked Plaintiff's Exhibit 7 for Identification.)

By Mr. O'Neill:

Q. Now, will you turn to the part of this report that is stated to contain the X-ray findings and identify those sheets?

(The witness refers to several sheets, the first of which is dated 9-2-29, and marked "Pelvis and lumbar spine"; [fol. 32] the second sheet of which is numbered 552, and is dated 9-25-29; the third is not numbered and is dated November 1st, 1929; the fourth is dated October 7th, 1929; the fifth is dated 2-28-30, "Chest B—Portable."

Mr. Rockwood: It will be admitted that these are the X-rays of Mr. Bezue and that the interpretation of those X-rays by Dr. Schmidt are in those papers to which the witness has referred, and that if Dr. Schmidt was here he would testify to the contents of those papers. Under that stipulation I am willing to proceed without him because that is all that I could ask him to do or expect that he would do.

Mr. O'Neill: Well, he would not probably be able to testify as he has stated in some of these if he was here. In any event, we cannot let any wholesale matters of opinions with reference to X-rays come in evidence. They haven't made any showing here upon which they are entitled to any adjournment. Now, we have gone to considerable trouble to be ready here today. We have called them up to verify that they were surely ready and we never hear until this minute that this X-ray doctor isn't here.

Now, it is proven here that these X-rays are X-ray films of the plaintiff. We don't object to those being received in evidence; in fact, we intend to put them in evidence. Now, as to what they show any competent X-ray expert is able to testify. I think it is well settled that you can't get an [fol. 33] adjournment just merely to get an expert witness to give his expert opinion. Furthermore, if we objected—we are not inclined to be technical at all—these X-rays couldn't be admitted in evidence or any part of them.

The Court: I don't agree with you on that at all. They have held now you may examine the doctor or anything else. If the doctor was here you could put them in evidence. The latest decisions are if you put the plaintiff on the stand he waives everything.

Mr. O'Neill: I have no doubt about that, but that isn't the principle I had in mind.

The Court: What principle have you in mind?

Mr. O'Neill: Well, the principle is that this doctor didn't take these X-rays.

By the Court:

Q. Does your record show who took these X-rays?
A. It shows that the technician did the X-ray work.
Q. Is the technician here?
A. No, sir.

Mr. O'Neill: They were taken by two persons, Miss Ruth Thompson and Miss Lenore Duffey. This doctor didn't take them. What he did about these X-rays was to make certain interpretations. So I don't need to say that his testimony would not be admissible.

Mr. Rockwood: They were taken under his direct supervision.

[fol. 34] By the Court:

Q. Let me ask: Sometimes a fluoroscope is used by which you can see yourself, but generally in hospitals they use a camera, don't they, an X-ray camera?
A. Yes.
Q. And that you don't look through, do you?
A. No.

The Court: Well, it doesn't seem to me they could be introduced in evidence without producing the one who took them to testify that they were the ones. Now, however, he makes this claim: He says "This chap read them and we depended on him to testify. For some reason he saw fit, after he agreed to be here, to decamp on Saturday night; and we want an opportunity to either get him back or to get someone in his place to read them."

Mr. O'Neill: He didn't decamp. Of course, that we know nothing about.

The Court: Let me ask the witness.

Q. Do you know what became of this doctor?
A. No, except that he stated that he was going on vacation.
Q. Well, was his vacation fixed some time in advance?
A. I couldn't tell you.

Q. Well, you are assistant superintendent?

A. Yes, sir.

Q. Don't they arrange for their vacations some time in advance?

A. We have no control over his time. He is a physician at the State Hospital, and he does these readings for us on his own time.

[fol. 35] The Court: Well, now, we have got to this situation, Mr. Rockwood: Mr. O'Neill says you can offer in evidence the X-ray photographs. The readings he will not consent to be read in evidence. Now, all I can do is to give you an opportunity to get some expert here to read them in his place. Now, how long will it take you to do that? You say you are surprised because this man isn't here.

Mr. Rockwood: Not only that, sir, but please understand this; that after this accident occurred this man was in charge of the doctor at the Middletown Hospital, which doctor operated in conjunction with Dr. Schmidt; and that doctor is their witness, not ours.

The Court: Well, whose witness is Dr. Schmidt?

Mr. Rockwood: Dr. Schmidt was our witness.

The Court: Then you want him for more than the X-rays.

Mr. Rockwood: I want him because he was one of the doctors that was involved in the attempt to cure this man of his injuries.

Mr. O'Neill: Involved don't mean anything. He was not the doctor who treated him at all. According to this testimony he is merely called in after certain technicians take X-rays to read them.

The Court: Well, do you claim, Mr. Rockwood, that he was present at some operation that was bad?

[fol. 36] Mr. Rockwood: No, no operation, but it was on the basis of Dr. Schmidt's reading of these X-rays that the man had the treatment that he had; and he is the only man who was currently familiar with the progress of this injury as followed by the X-rays.

Mr. Brumley: I would like to add this, your Honor: The information came to us late yesterday afternoon, after a conference I had with Mr. Lewis, not in regard to this matter, that one of the women taking the X-ray is now in Washington.

The Court: Well, you see that part doesn't cut any figure because Mr. O'Neill says you may introduce the X-rays in evidence and he will have no objection to them.

Mr. Brumley: Not if we insisted on an adjournment. I take it in that event we would have to prove the X-rays then in the regular way.

The Court: Well, if you get any adjournment you have got to know when this chap is coming back from Canada.

Mr. Brumley: Our information was that he would be back in a week. We have also got to seek out, if there is any objection to the introduction of these X-rays, this woman or two women who took them.

The Court: Well, let's ask this witness on the stand:

Q. Did two participate in the taking of this X-ray?

A. Two different ones were there at the time these were taken.

[fol. 37] Q. And were both there during all the time?

A. No, one came and left. She took part of these, and another one came and took part of them.

Q. Are they both now at the hospital?

A. They are both gone—they are not there.

The Court: Well, to pass on that question, Mr. O'Neill, assume that there is an adjournment—I don't say there will be—assume there is an adjournment. Will you insist on these two ladies who took these X-rays being present?

Mr. O'Neill: No.

The Court: That ends that then. We don't have to worry about that. So, when you get down to it, your only question is about this Dr. Schmidt.

Mr. O'Neill: The only question about it is this, that I am not going to consent at this time, or even if they did have an adjournment—in other words, they are asking to get an adjournment for something which they couldn't get in evidence if the doctor was here, which proves that they are not entitled to an adjournment. In other words, they want a doctor's readings or some of his readings in evidence, whereas all they are entitled to have is affirmative evidence.

The Court: If he was here he could be put on the stand and examined.

Mr. O'Neill: He could be examined the same as any other witness, any other expert that they call to testify what he thinks these X-rays read.

[fol. 38] Mr. Rockwood: He isn't called in the nature of an expert. He is called in the nature of almost an attending physician thereto.

The Court: I am not inclined to agree with you on that, Mr. Rockwood, because all I can gather is he made an examination, and what you say is he recommended certain treatment or stated certain conditions to the attending physician, who followed up with this treatment. I am inclined to let you have your witness, but I want to know now if I give you an adjournment when will you be ready to go on?

Mr. Rockwood: I don't think there is any doubt, sir, that this doctor will be back by Sunday night.

Mr. O'Neill: Before your Honor gets to this question about what time we are going to adjourn, I think we would like to be heard a little more as to whether there is any possible excuse for an adjournment. It seems to us that there is none, for this reason; this gentleman, if he was here this moment, couldn't say anything different than any other competent X-ray man could do. Now, these X-rays are going to go in evidence. We have admitted that they were taken of the plaintiff. They can go in any shadow-box. Where we have had others taken for our own use our own doctor will testify. The X-ray expert they usually call or some other man will pass on, not only these X-rays, but ours. He will give plenty of testimony with reference [fol. 39] to them. Probably he will be a more experienced man. And all that they are getting an adjournment for is to get an expert witness to give an opinion with reference to something produced in Court and which any competent person can see. Now, that is what they are asking an adjournment for.

Mr. Rockwood: We are not. We are asking an adjournment because we want that witness. We know what he had to say, and want him here.

Mr. O'Neill: I object to that as improper.

The Court: I am going to grant the adjournment upon condition that the defendant pay $250 to cover plaintiff's expenses. All I want to know is what day to adjourn it to so that you may have your witness here. If I fix a day and he isn't here we will go on without him.

Mr. O'Neill: Before we do that, there is the convenience of a doctor here to be considered. We have subpœnaed a

local doctor over there who had charge of this man, and he has got no interest in the case one way or the other. And at very great inconvenience to myself he has come over here; and if it is possible to take his testimony as to facts, and not his opinion, so that this gentleman won't have to be recalled, I would like to do that also.

The Court: I will impose that as a condition; that we will examine the doctor now and that his testimony be read on the trial. Now, I also impose as a condition that this testimony of Mr. Rich may be read in if you wish it.

[fol. 40] Mr. O'Neill: I hope your Honor isn't fixed in the conclusion that there must be an adjournment, but if there is, I don't want to argue about the value of my own time or the time of my assistant, but unless we succeed in stopping a couple of our doctors coming over here $250 won't look like paying our expenses, to say nothing for our own time, which, I suppose, is worth more than $250.

The Court: See if your assistant can stop the doctors coming.

Now, the above stipulation applies to the trial of this case, no matter when it may be tried. All parties agree.

Mr. Brumley: Now, may Mr. O'Neill and I have a chance to examine these X-rays during the adjournment?

The Court: You can arrange that between you. I will put on the record that I direct that the records and the exhibits be given to the custody of Mr. O'Neill; that upon one day's notice, he will permit any X-ray doctor to examine both the X-rays and the readings at his office, 256 Broadway, New York City.

The Court: Now, I will adjourn this case until next Thursday, October 2nd.

Have you managed to stop your doctors?

Mr. Lewis: I have managed to stop one; the other one I am going to try to, but the chances are that I won't be able to get hold of him.

The Court: If they don't stop him now I will increase the [fol. 41] amount to $350, to be paid by the defendant. It is $250 now, and if the doctor comes up here they are entitled to $100 more. Now, they will let us know and the doctor will report here to the clerk if he comes.

Dr. Moses A. Stivers, a witness for the plaintiff, being called and sworn, testified as follows:

(It is stipulated by both parties that the testimony of Dr. Moses A. Stivers may be taken and read before the jury with the same full force and effect as though his examination and cross examination was taken in court in the presence of the jury.)

Direct examination.

By Mr. O'Neill:

Q. Now, Doctor, will you please state your professional education and experience, briefly?

A. Graduate of the College of Physicians and Surgeons in New York City in 1894.

Q. And since that time you have been practicing medicine?

A. I have.

Q. And surgery?

A. Yes.

Q. And where?

A. Interne in New York City for practically three years, and since that time in Middletown, N. Y., with the exception of service in the Army three years, nearly three years.

Q. How long in the Army? You dropped your voice.

A. Nearly three years.

Q. And was that as a surgeon or a physician?

A. As a surgeon.

[fol. 42] Q. And how long have you been practicing medicine in Middletown?

A. Since 1894, with the exception of these five or six years.

Q. And were you connected with the Elizabeth Horton Memorial Hospital of Middletown at the time this man was injured on September 2nd, 1929?

A. I was.

Q. And in what capacity?

A. As the attending surgeon.

Q. You were in no sense this man's private doctor?

A. I had never saw him before that date.

Q. And did you see him the day he was brought in?

A. I did.

Q. Now, what was his then condition?

A. He was brought in by ambulance, as I recall it. His chief complaint was pain in the lower part of his back.

Q. And he was put to bed, was he?

A. He was.

Q. And how long did he stay in the hospital?

A. Two months.

Q. And did you treat him all that time, Doctor, as the attending surgeon?

A. I was away part of the month of October.

Q. Well, you were there when he left and before he left?

A. I saw him when he left.

Q. What was he suffering from?

A. At the time, you mean, on discharge?

By the Court:

Q. During the time he was there what was the matter with him?

A. His chief complaint was pain in the lower part of his back, increased by effort, or when he sat up in a chair or when he attempted to walk.

Q. Or by any movement?

A. Or by many movements.

[fol. 43] By Mr. O'Neill:

Q. Well, what was the matter with him? What caused this condition?

A. We found a fracture of the last lumbar vetebra and evidence of the crushing of the posterior surface of his sacrum.

Mr. Rockwood: I move to strike it out unless the doctor can testify that he found that by his examination and he saw or observed it.

Mr. O'Neill: That is what he treated him for. This man is the attending physician. This not a proper objection.

By the Court:

Q. Well, the question is, Doctor, is the testimony you are giving now from your own observation?

A. From my own observation, influenced by the X-ray report.

By Mr. O'Neill:

Q. Corroborated by the X-ray report, wasn't it?

Mr. Rockwood: I object to that as leading.
The Court: Well, of course, that is sustained as leading.

By Mr. O'Neill:

Q. Well, you yourself observed the man's back, observed his condition, what he could do. From that alone you could conclude, could you not, that he had an injury to some part of his back?

[fol. 44] Mr. Rockwood: That is objected to as leading.
The Court: I will overrule that.
Mr. Rockwood: Exception.

The Witness: I did.

By Mr. O'Neill:

Q. That was your diagnosis anyhow, as the attending physician in this case, wasn't it?

A. It was, yes, sir.

Q. That was the diagnosis that you worked upon, that this man had a fracture of the fifth lumbar vertebra and diffused crushing of the first two sacral segments; isn't that correct?

A. Yes, sir.

Q. That was his condition and that is what you treated him for; is that right?

A. That was what I considered his condition.

Q. And you put a plaster cast on him, didn't you?

A. I did.

Q. And when he was leaving recommended that he wear one, have it made specially?

A. I ordered one put on him. I didn't personally put it on him.

Q. And this is the one that you ordered, is it not (indicating), two of them; that is, one that he takes off so as to give it a chance to dry out and to be aerated, is that right?

A. Yes, sir.

Q. But two, each of this type, is that right (showing witness)?

A. Yes.

Mr. Rockwood: Identical, do you mean?

Mr. O'Neill: Yes, just so it will be clean and aired, and so on.

[fol. 45] By the Court:

Q. One you wear, and you change that and put another in its place when you air the one you take off, Is that the idea?

A. Yes.

Mr. O'Neill: I offer this in evidence.

(Brace received in evidence and marked Plaintiff's Exhibit 8.)

By Mr. O'Neill:

Q. Now, this one that he has on is the same?

A. Essentially the same.

Q. Well, so far as it is possible to make them, it is intended to be exactly a duplicate?

A. Yes.

Mr. O'Neill: I offer that one, too.

(Brace on plaintiff's body received in evidence and marked Plaintiff's Exhibit 9.)

Cross-examination.

By Mr. Rockwood:

Q. Now, Doctor, you had a report on X-rays on the day that he was admitted, did you not?

A. He was X-rayed on the day he was admitted, yes.

Q. Did you get your report on that day?

A. I don't know; I presume so.

By the Court:

Q. Did you examine the X-rays?

A. I looked at some of the X-rays, not all of them.

Mr. O'Neill: To save time, there is one dated 9-2-29, if that is what you want (indicating).

[fol. 46] By Mr. Rockwood:

Q. Did you have a subsequent X-ray after the day of his admission?

A. Yes.

Q. And did you get the reading of that from some other doctor in the hospital?

A. Yes.

Q. And when about was that second X-ray taken?

A. There were X-rays taken two or three times subsequent to this first X-ray.

Q. When was the last X-ray taken?

A. I think there was an X-ray taken after his discharge and when he was coming back there as an outpatient.

Q. Now, you told Mr. O'Neill that your diagnosis of this man's condition was a fracture of the fifth lumbar, didn't you?

A. Yes.

Q. Is that what you told Mr. O'Neill?

A. Yes.

Q. Did you make that diagnosis before the X-rays were taken and interpreted for you?

A. I did not.

Q. Is that diagnosis that you made based entirely on the report and the evidence of the X-ray as to the fifth lumbar?

A. Not entirely.

Q. Now, as a matter of fact, the fracture of the fifth lumbar was to the posterior portion of the fifth lumbar, was it not?

A. The spinous process, yes, the posterior projection.

Q. Yes, and it was only to the spinous process, wasn't it?

Mr. O'Neill: I object to that. How could he say whether it didn't project into the body of the vertebra?

The Court: Objection overruled.

Mr. O'Neill: I except.

The Witness: I can't say.

[fol. 47] By Mr. Rockwood:

Q. What was your diagnosis?

A. My diagnosis was of the spinous process.

Q. And that is as far as your diagnosis went?

A. That is as far as my diagnosis went.

Q. And when you made that diagnosis you gave a complete diagnosis, didn't you?

A. Complete as far as I knew, yes.

Q. So at that time you were satisfied that there was no fracture other than to the spinous process, weren't you?

Mr. O'Neill: Objected to in that form, saying that he was satisfied. He just states that as far as he knew that is what it was.

The Court: This is cross examination. Objection overruled.

Mr. O'Neill: Exception.

The Witness: Yes.

By Mr. Rockwood:

Q. Now, you said that you also diagnosed this condition as a diffused crushing of the first two sacral segments? Were those your words?

A. Those were my words, but it was also a quotation from the X-ray finding, as I recall it.

Q. In other words, that diagnosis was entirely based on the X-ray findings, wasn't it?

A. That was influenced by the X-ray findings but not entirely based on it.

Q. Now, this diffused crushing that you speak of, that was confined to the shell of the upper two sacral segments, wasn't it?

A. Yes.

Q. And it is a fact, isn't it, doctor, that the posterior aspect of the upper two sacral segments is rough?

A. Yes.

[fol. 48] Q. And there are projections on those segments posterior, are there not?

A. There are.

Q. And it was those projections that were chipped and that created this diffused crushing; isn't that right?

A. I don't know whether they were chipped or not. It was a denting, perhaps, of the surface.

Q. And those rough edges and surface and projections of those bones were in some way mutilated?

A. The contour of the posterior surface was changed.

Q. But that, as you said before, was confined to the shell or segments?

A. As far as I know.

Q. And you are pretty well satisfied that that is the fact, aren't you, doctor?

Mr. O'Neill: I object to that, as to how well he is satisfied.

The Court: That objection is overruled.

Mr. O'Neill: I except.

The Witness: I was.

By Mr. Rockwood:

Q. Now, your diagnosis, Doctor, established also that that condition cleared up, didn't it?

Mr. O'Neill: Objected to.

The Court: The only thing I am in doubt about is what you mean by "That condition."

Mr. Rockwood: I will withdraw the question.

Q. You testified, Doctor, that this man was in the hospital for two months; is that right?

A. I did.

[fol. 49] Q. And under your care and treatment?

A. Most of the time.

Q. And after his discharge from the hospital you had occasion to see him again, did you not?

A. I did.

Q. On one or more occasions?

A. Yes.

Q. The last time he had called on you professionally being when?

By the Court:

Q. About when?

A. About the middle of August—about six weeks ago.

By Mr. Rockwood:

Q. And you had seen him at intervals between the middle of August, 1930——

Mr. O'Neill: I object to this as not redirect examination at all. The strict rule should be applied to this. He is

calling him now as his witness. We limited him to his attendance of this man in the hospital for two months.

The Court: Objection overruled.

Mr. O'Neill: Exception.

By Mr. Rockwood:

Q. And you had seen him at intervals between the middle of August, 1930, and the time of his discharge from the hospital, had you not?

The Court: The objection made by Mr. O'Neill applies to the completed question.

The Witness: Yes.

[fol. 50] By Mr. Rockwood:

Q. Now, during that period after his discharge from the hospital did you examine him to see what the condition of his back was?

Mr. O'Neill: I object to it upon the ground we are calling this doctor merely to prove his condition in the hospital.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: Yes, I examined him.

By Mr. Rockwood:

Q. And did you at that time have the benefit of the reading of any X-rays?

Mr. O'Neill: Objected to as immaterial; and in addition we object to it on the ground we haven't referred to any such X-rays.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: Yes, there was an X-ray taken following his discharge.

By Mr. Rockwood:

Q. On or about May, 1930, was that, Doctor?

A. There was one in May.

Q. Now, on your examination in May is it not a fact that the condition of the first and second sacral segments had changed from the condition that you saw in the hospital?

Mr. O'Neill: We object to this upon the ground that he [fol. 51] is evidently being asked and obviously being asked with reference to some conditions shown by a subsequent X-ray, as to which there is no evidence and which is necessarily based upon hearsay. He wasn't present when any X-ray was taken.

The Court: The objection is sustained unless you identify the X-ray.

Mr. O'Neill: And, of course, if this doctor looked at the X-ray.

The Court: Of course. He is asking him what his opinion was then, based on an X-ray.

Mr. O'Neill: First find out if he did look at it at all.

The Court: Well, he may examine the X-ray and frame his own question.

By Mr. Rockwood:

Q. I show you this envelope marked Plaintiff's Exhibit 3 for Identification, and ask you if on or about May, 1930, you saw those X-rays?

By the Court:

Q. Take a look at the notation on the corner, Doctor?
A. No, I did not see the X-ray.
Q. Didn't examine the X-ray at all?
A. No.

The Court: Then my suggestion was out of order, because I thought it was based on that myself. Now he may ask him what his opinion was at that time.

Mr. O'Neill: Well, first of all he has to find that it was [fol. 52] based on anything, or that he made an examination of him, and that he came to some conclusion on what he made.

The Court: Suppose you ask a question and then I will rule on the objection.

By Mr. Rockwood:

Q. Did you at that time, referring to May, 1930, when you saw this plaintiff make any diagnosis then of his con-

dition at that time with regard to the first and second sacral segments?

Mr. O'Neill: We object to it upon the ground the question is improper in form, that there is no proper foundation. It doesn't appear that he made any examination in May, and if so when, what examination he made. We have a right to know and find these things out.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: No.

By Mr. Rockwood:

Q. You did not. When the plaintiff was in the hospital, doctor, in addition to ordering the plaster cast you strapped him up, did you not?

A. Yes.

Q. And after you left the hospital you continued to advise him, did you not, as to what to do for his condition?

A. Yes.

Q. And did you continue to take care of him as an attending physician for some months after he left the hospital?

[fol. 53] Mr. O'Neill: I object to that as indefinite. He may ask him what he did do.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: He visited the office several times and I advised him what to do.

By Mr. Rockwood:

Q. When you say you advised him what to do you mean what treatment to take or what to do for his difficulty?

A. Yes.

Q. What did you advise him to do?

A. I advised a course of diathermy and possible massage.

Q. What is diathermy, doctor?

A. Diathermy is a system of treatment by electricity whereby heat is generated in the body at a certain point where it is desired to have heat.

Q. And you also mentioned massage?

A. Yes.

Q. And do you know whether these treatments were taken or given to this man?

Mr. O'Neill: We object to it unless he was present.

By Mr. Rockwood:

Q. Of your own knowledge?
A. I know nothing of my own knowledge.

The Court: Unless he was present or the plaintiff informed him.

By Mr. Rockwood:

Q. Now, did the plaintiff advise you as to whether he [fol. 54] had followed your instructions as to diathermy and massage?
A. My recollection is that he told me he did take a few treatments and then discontinued it.
Q. And about when was that, Doctor?
A. I can't state exactly.
Q. Well, was it in the spring?
A. It was after his discharge from the hospital.
Q. And was it before August of 1930?
A. Yes.
Q. As a matter of fact, it was before May of 1930, wasn't it?

Mr. O'Neill: Objected to as leading on new matter.
The Court: Objection overruled.
Mr. O'Neill: Exception.

The Witness: I don't know.

By Mr. Rockwood:

Q. Subsequent to that conversation with the plaintiff did you advise any further or other treatment for him?
A. Nothing different.
Q. You said the plaintiff called on you, came to your office, did he not?
A. He did.
Q. How did he come, Doctor?
A. Why, I don't know.
Q. You never observed him arriving there?
A. He came in a motor car.

Q. Who drove?

A. I don't know.

Q. You are sure you don't know, Doctor?

A. No, I don't know.

Q. At the time that you made the diagnosis that you first referred to you made some report of that, did you not, of that diagnosis?

A. Sometime during his stay in the hospital.

Q. And let me ask you if this is the correct statement of your diagnosis at that time?

[fol. 55] The Court: Will you give the date?

By Mr. Rockwood:

Q. September 11th, 1929. "A transverse fracture of the base of the spinous process of the fifth lumbar and apparently some diffused crushing of the posterior aspect of the first, two sacral segments?"

A. Yes.

Q. Now, at the same time, Doctor, that you made that report, that diagnosis, were you asked your opinion as to whether this injury would result in any permanent defect?

Mr. O'Neill: We object to that. Now, that is obviously not competent. It certainly isn't cross examination of this witness. We haven't asked him a single thing about whether these injuries were permanent or not. Now he is being called as their doctor. Not only that, but he is being called for the expression of an opinion, to give expert and opinion evidence; and this gentleman has not been employed by anybody so far as we know as an expert witness, not being paid for it. He is being subpœnaed here as a lay witness, in fact, and as a matter of fact he told me he was here only to testify to facts.

The Court: Yes, but he is a doctor, a physician.

Mr. O'Neill: But he isn't obliged to give opinion evidence to anybody.

The Court: The objection is overruled.

Mr. O'Neill: I except. May I suggest that your Honor [fol. 56] inform him that he is not obliged to give opinion evidence.

The Court: No, I will not. I will inform him that he is obliged to give his opinion. He is here, he is put on as a witness, and he is a physician.

The question was read by the stenographer.

Mr. O'Neill: I object to that as utterly incompetent, whether he was asked or whether he answered it at that time.

The Court: I will allow him to answer it yes or no.

Mr. O'Neill: Exception.

The Witness: I believe there was such a printed question on the blank and I answered it.

By Mr. Rockwood:

Q. What answer did you give?

Mr. O'Neill: Now, that is objected to—it would be objectionable if he was called as their main witness. I think your Honor will see upon reflection that some of the views that you have already expressed with reference to this doctor are erroneous. Now, first of all, suppose he was called as a witness by them as to this new matter. Your Honor's theory is that you have a right now to do it in your discretion because he is here and should not be brought back, and all that sort of thing. But if he was called as a witness by [fol. 57] them to give direct evidence he could not be required to give any opinion evidence.

The Court: Well, there is where I differ from you; and I would like to see some authority. As far as I have ever been able to find out you can call any doctor and you can compel him to give an opinion if he knows the facts of the case.

Mr. O'Neill: You can't compel him to give an opinion.

The Court: Until you show me some decision I am against you on that. I am going to let it in. If you show me a decision against it I will strike it out next Thursday.

Mr. Rockwood: In view of the fact that Mr. O'Neill's examination of this witness was as to his diagnosis, and that I quoted the exact words that Mr. O'Neill used of that diagonisis as taken from the contents of the witness' report, it doesn't seem to me you can claim that I am going beyond the scope of Mr. O'Neill's examination in asking him his conclusion from that whether there was anything permanent or not.

The Court: Well, you see, the only question is this, Mr. Rockwood: The question now is not what his opinion was

at that time. The question is what opinion he expressed at that time. Now, I will permit you to ask him what his opinion was at that time. That I will allow you to ask him. And if it differs from what is written there I will allow you to cross examine him on that.

[fol. 58] By Mr. Rockwood:

Q. Doctor, what was your opinion on the 11th day of September, 1929, with regard to the permanency of the injury that this man sustained?

Mr. O'Neill: I object to it upon the ground, first, that it is not cross examination; that it is new matter as to which he is being made their witness; that it is not as to a matter of fact, which is the only thing as to which this doctor has testified and the only thing as to which he can be compelled to testify; that he is asked to give opinion evidence and he has not consented to give opinion evidence.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The question was read by the stenographer.

The Witness: I believe my opinion is recorded there.

By Mr. Rockwood:

Q. What was your opinion?

Mr. O'Neill: I object to it as incompetent—calling for the contents of an original document.

The Court: Objection overruled.

Mr. O'Neill: Exception. Besides, the word is indefinite, as to what would be permanent.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: My recollection is that——

[fol. 59] By the Court:

Q. It isn't that. He asked you what your opinion was—he didn't ask you what you wrote down.

A. It is the same thing.

Q. Well, what was your opinion?

A. That it was not permanent.

Mr. O'Neill: I move to strike it out on the grounds I stated before.

The Court: I will reserve decision and allow you to submit your authority and rule on it when it is reached.

By Mr. O'Neill:

Q. As I understand it, Doctor, you definitely stated before being called here as a witness that you were here merely as a lay witness about facts?

A. I did.

Q. And that you objected to giving expert testimony unless arrangements were made with you, proper and appropriate financial arrangements were made with you to pay you as an expert witness; is that correct?

A. I did.

Mr. Rockwood: Now, if your Honor please, I object to that.

The Court: Overruled.

Mr. O'Neill: The decisions are only one way on that subject, and that is he cannot be compelled.

The Court: Until you show me an opinion this Court is going to hold that he can be put on and asked his opinion; and you having put him on, they can cross examine him fully and adequately.

[fol. 60] By Mr. Rockwood:

Q. Doctor, when you saw this plaintiff in December, 1929, state whether you observed any improvement in his condition?

Mr. O'Neill: Objected to as involving a conclusion.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: I did some time during the fall or winter make such a statement, that I considered he was improved.

By the Court:

Q. He didn't ask you whether you made any statement at all. He asked you whether you observed it.

Mr. O'Neill: Same objection. Not cross examination, new matter, and that it is indefinite and improper.

The Court: Same ruling.
Mr. O'Neill: Exception.

The Witness: I did observe it.

By Mr. Rockwood:

Q. When you examined this man in December, 1929, or at any time subsequent thereto, Doctor, state whether you observed any muscular spasm of the muscles surrounding the point that you have described?

Mr. O'Neill: Same objection. It is new matter—not our witness as to these matters.
[fol. 61] The Court: Overruled.
Mr. O'Neill: Exception.

The Witness: I did not.

By Mr. Rockwood:

Q. Now, when you observed this man in December—let me ask you if you recall having seen him sometime just prior to December 23rd?

A. I don't recall the dates.

Q. Have you any memoranda or anything with you that would refresh your recollection on that?

A. I have.

Q. Well, won't you refer to whatever memoranda you have and tell me when it was in December, 1929, that you saw the plaintiff?

A. December 11th and November 29th are the notations I have here.

Q. After December 11th did you see him?

A. January 15th.

Q. Now, on this visit on December 11th, 1929—is that the occasion when you said you noted an improvement in his condition?

Mr. O'Neill: Same objection.
The Court: Overruled.
Mr. O'Neill: Exception.

The Witness: I don't know.

By Mr. Rockwood:

Q. But you did observe an improvement in the plaintiff's condition about this period?

A. About that time.

Q. Now, will you tell us, Doctor, in what way you observed this improvement, I mean in what respects the improvement appeared?

[fol. 62] Mr. O'Neill: Same objection.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: His general physical condition was better, and as I observed his walking—my impression was that he was walking with less difficulty.

By Mr. Rockwood:

Q. That is, there was a muscular improvement—that you observed?

A. That was my observation.

Q. Did you make a similar observation in January when you testified you saw him?

Mr. O'Neill: That is a conclusion.

The Witness: The condition was about the same.

By Mr. Rockwood:

Q. Can you, by refreshing your recollection from the memoranda in your pocket, tell us how often you saw this man after he left the hospital?

A. I think I have stated about a dozen times from the time of discharge until the present time.

Q. You have given us three dates, November 29th, December 11th and January 15th, I think they were.

A. I still say about 12 times.

Q. And what was the date you saw him during May of 1930?

A. May 26th.

Q. And whom did you send the plaintiff to for this diathermy treatment that you spoke?

A. To the Middletown sanitarium.

Q. Are you connected with that, professionally I mean?

[fol. 63] A. Not officially. I have the privilege of taking patients there or treating them.

Q. Under courtesy?

A. There is no staff.

Q. Now, Doctor, on the occasions of these several visits did you in addition to this diathermy treatment prescribe for him any medication?

A. No.

Q. And, as a matter of fact, Doctor, since prescribing the diathermy treatment you haven't prescribed any other thing for him at all, have you?

A. Not since his discharge from the hospital.

Redirect examination.

By Mr. O'Neill:

Q. Now the only improvement that you observed was to the extent to which you have stated here; is that right?

A. Yes.

Q. And you know that this man continues to wear this brace that you advised and recommended?

A. He does.

Q. And that is the proper thing for him to do, in your opinion?

A. Yes.

Q. Now, the railroad company paid you for this man's treatment up to a certain date, did it?

A. It did.

Q. Until what date?

By the Court:

Q. About what date?

A. Well, about two months ago, I think, approximately.

By Mr. O'Neill:

Q. And did you from time to time make reports to the railroad company, which was paying you, as to your patient's condition?

A. I did.

[fol. 64] Q. Now, referring to your diagnosis, which has been read here as a transverse fracture of the base of the spinous process of the fifth lumbar; the base of the spinous process is right on the body of the vertebra itself, isn't it?

A. Well, it is on the posterior arch.

Q. Well, you have on the sides the transverse process, and on the back you have the spinous process; is that right?

A. The body is placed in front. It is the round part.

Q. Well, what is in back? What is the spinous process attached to?

A. Laminae, they are called—two flat bones.

By the Court:

Q. Looks like a set of horns?

A. Well, it looks like a circle—not a round circle, but a four sided one having places for the spinal cord to go through, and it is the posterior part of the ring. The spinous process connects back from the ring.

Q. Are the muscles tied to this spinous process by ligaments or something?

A. Yes.

By Mr. O'Neill:

Q. Well, the whole vertebra has, Doctor, three projections from it. The laminae, you say, is the back or posterior part of the ring and fronts the body; is that it?

A. Yes.

(Witness excused.)

[fol. 65] New York Supreme Court, Putnam County

Before Mr. Justice Mack, J. S. C., and a Jury

[Same Title]

Carmel, N. Y., October 2nd, 1930.

Appearances:

Thomas J. O'Neill, Esq., attorney for the plaintiff.
Charles Lewis, Esq., of counsel.
John M. Gibbons, Esq., attorney for the defendant.
Edward R. Brumley and N. O. Rockwood, Esq., of counsel.

A Jury was empaneled, examined, accepted and sworn.

Mr. O'Neill opened the case to the Jury on behalf of the Plaintiff.

Mr. Rockwood opened the case to the Jury on behalf of the Defendant.

Mr. O'Neill: Now, perhaps I think we ought to read what happened the other day.

This is what occurred here, gentlemen, before we took the jury, but this really constitutes part of the trial, as you will see, by arrangement between the Court and counsel.

(Mr. O'Neill proceeds to read the statement of Mr. Rockwood beginning at page 1.)

[fol. 66] Mr. Rockwood: If your Honor please, is it necessary to read all this argument of counsel? It seems to me that the testimony should be read, but the rest of it seems immaterial and unnecessary to burden the jury with.

The Court: The stipulation should go in, I think, but not the general argument.

Mr. O'Neill: I don't see any reason why it shouldn't be read. It is part of the trial.

The Court: I don't think any of the discussion between the Court and counsel is of any use to the jury, and to that extent I will sustain the objection. Now, at page 5 you have a stipulation. Read that.

(Mr. O'Neill reads the stipulation on page 5, beginning with the words "The Court: Let us get a stipulation on the record then.")

Mr. O'Neill: Then we called Dan W. Rich.

(Mr. O'Neill reads testimony of Dan W. Rich, beginning at page 6.)

Counsel stipulate that the exhibits marked in connection with the testimony of Dan W. Rich shall have the same marks and numbers on this trial.

Mr. Rockwood: Now, Mr. O'Neill, I think we ought to omit Plaintiff's Exhibit 6 for Identification, which we have found contain 2 films which are not of this plaintiff at all. They are in some other case.

Mr. O'Neill: That is correct.

Plaintiff's Exhibit 6 is omitted by stipulation.

It is stipulated by both parties that these X-rays which have been produced and marked are actual X-rays of the [fol. 67] plaintiff here and relate to his claimed injuries.

Mr. O'Neill: And that they may be now considered marked in evidence with the same marks as they had for identification.

The Court: They may now be offered in evidence and the note "For identification" shall be stricken out. They are in evidence and bear the same numbers.

(Plaintiff's Exhibits 1, 2, 3 and 4 for Identification now become Plaintiff's Exhibit 1, 2, 3, and 4 in evidence.)

Mr. O'Neill: Now, we then called Dr. Moses A. Stivers.

(Mr. O'Neill reads beginning with the words "Dr. Moses A. Stivers, a witness for the plaintiff," on page 19, through the direct examination.)

(Mr. Rockwood reads the cross-examination beginning on page 25, down to the question on page 37, beginning with the words "Now, at the same time, Doctor.")

Mr. O'Neill: I submit he has no right to read that question. If this man were here as a witness counsel would have a right to ask him the question, but that question was asked and certain answers given under a misapprehension of the law, I think.

The Court: You see, I haven't changed my mind. I have read these authorities and I still have the same opinion.

Mr. O'Neill: Then there is nothing more to say.

(Mr. Rockwood proceeds to read the objection by Mr. O'Neill at the bottom of page 37.)

[fol. 68] Mr. Rockwood: I don't think I need read all this.

The Court: It seems to me that we should take care of the record, because unless it is in the record, if I am wrong, you can't correct me. Oughtn't this whole argument be considered a part of it, even though it isn't read to the jury? It seems to me it should be.

Mr. Rockwood: I understood that all objections and exceptions are reserved in here.

The Court: All right then. Mr. O'Neill doesn't care anything about your reading it then. Just say "The Court overruled the objection" and read the answer right in.

Mr. O'Neill: First of all we object to it upon another ground. It wouldn't make any difference if the witness was here now, as to whether or not he was then asked his

opinion as to whether there was any permanent defect. First of all, he was not testifying as a witness for the plaintiff on any such question. He was not brought here on any such issue, therefore it certainly wasn't proper examination. In other words, they are contradicting something which then had not been asserted by the witness, and in any event, it is an attempt on their part at that time to get his idea of what he thought about it at that time.

The Court: Objection overruled.

Mr. O'Neill: Exception.

(Mr. Rockwood reads the answer on page 39:)

"A. I believe there was such a printed question on the blank and I answered it.

"Q. What answer did you give?"

Mr. O'Neill: That was objected to.

The Court: Well, objection sustained on that.

[fol. 69] (Pages 41 and part of 42 read by Mr. Rockwood.)

The Court: Now, page 42. I now rule on the reservation and deny the motion and grant an exception.

Mr. O'Neill: That motion is based not only on the ground that the doctor for the reasons given was not able to express an opinion, but primarily upon the ground also that this witness having been called merely as a doctor who treated him in the hospital as to conditions which he then observed. He was not subject to cross examination to be asked as to some opinion as to the future, as to which he had given no direct testimony whatsoever.

The Court: Same ruling.

Mr. O'Neill: Exception.

(Mr. O'Neill reads the redirect examination.)

(Mr. Rockwood reads the recross examination.)

The Court: Now, the complete record of the proceedings of September 24th, 1930, in this case is to be considered part of the record.

(A recess was here taken to 1:15 o'clock p. m.)

[fol. 70] After Recess

Dr. JOHN A. FAIELLA, a witness for the plaintiff, being called and sworn, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. Now, Doctor, you are a physician and surgeon engaged in the practice of your profession in the City of Yonkers?

A. Yes, sir.

Q. Will you state briefly your professional education and experience?

A. I am a graduate of New York University and Bellevue Hospital Medical School, '06; interne, St. Joseph's Hospital, Yonkers, 1906 and '07, and have been connected with St. Joseph's Hospital, Yonkers, in the out-patient department, as alternating surgeon, as attending surgeon, and as president of the medical board; I am also connected with the Yonkers General Hospital and St. John's Hospital, and I am attending surgeon to the City Hospital.

Q. You have your office in Yonkers?

A. City of Yonkers, yes.

Q. And altogether, since you entered the hospitals and practicing it has been how long?

A. About 25 years.

Q. Now, at the request of my office did you make an examination of this plaintiff?

A. Yes, sir.

Q. Now, when and where did you make the examination?

A. I saw him about the middle of July, 1930, at the office in White Plains; and also this morning.

Q. Now, Doctor, I will ask you to assume the following fact, which I am going to state as appearing from the [fol. 71] X-rays; and then will you tell us about the examination you made and the conclusion that you arrived at? X-rays have been admitted in evidence here, which according to the testimony show a fracture of the 5th lumbar vertebra and a diffused crushing of the first 2 sacral segments——

Mr. Rockwood: I take exception to the statement that the X-rays show that. Dr. Stivers testified that was his diagnosis.

Mr. O'Neill: We have a right to assume that fact as proven.

The Court: Of course, ordinarily you would not, but I am going to allow you to ask the question on the assumption that you will prove it by some other physician.

Mr. O'Neill: We have already proven it, your Honor. It is in the testimony, page 23.

The Court: Now, let me ask you; is it your contention that he testified that he ascertained that from the X-ray, or he made it from his own examination?

Mr. O'Neill: His direct answer, you will see by his testimony, was that he did that with the aid of the X-ray, but not alone by the X-ray, that he made an examination himself.

The Court: As he said, influenced by the X-ray.

Mr. O'Neill: Yes. Anyhow, that is the testimony so far.

(The question was read by the stenographer.)

[fol. 72] Mr. O'Neill (continuing):

Q. —of the sacrum——

Mr. Rockwood: I object to the statement that the X-rays show that.

The Court: Well, of course, I am not entirely clear, Mr. O'Neill, but I am going to take your statement that the evidence is that the X-ray shows it. My own recollection was that he said that was his diagnosis of his examination, influenced by the X-ray. Objection overruled, and I will give Mr. Rockwood an exception.

By Mr. O'Neill:

Q. Now, state what examination you made of this man, what you observed yourself, what you ascertained, and of course keep in mind what I have told you about the X-rays.

A. I examined his back and his legs and the injuries as particularly confined to the right side of his body, including the right side of his lumbar region, the right hip and the right leg. He has a paralysis of the leg which involves some of the muscles of the leg, principally the flexor muscles of the lower leg, producing a condition of paralysis that makes the foot drop so that the man is unable to raise the

foot. He has also no power in the large tendon of the heel, the tendon achilles, in order to be able to move the ankle joint. As a result of that when he walks the foot drops down lifeless and hits the floor with the toes, particularly the big toe. In other words, it gives him a sort of a dragging walk. The muscles of the lower leg are paralyzed to a certain extent producing an inability to extend the foot—[fol. 73] they are not all paralyzed but some of the muscles are, and they are diminished in size. The circumference of the calf of the leg on the right side is quite smaller than the one on the left side, whereas usually the right calf is larger. This decrease in the circumference of the calf of the leg is due to an atrophy of those muscles.

Q. By atrophy you mean wasting?

A. Wasting of the muscles, in all probabilities due to the nerve supplying those particular muscles.

Q. Is that your opinion with reasonable certainty, Doctor?

A. Well, together with the other symptoms.

Q. I say, that is your opinion with reasonable certainty?

A. Yes. There is lack of sensation on the outer side of the lower leg. It seemed to be anesthetic. The outer side of the leg is anesthetic, that is, he doesn't feel any scratching or pin point along the outer side of the leg—he doesn't feel it at all. He has no sensation. There is one particular thing I noted on the examination. Immediately after removing his trousers if you put your hands on the calf of the leg the right calf was absolutely cold, and the left calf is warm. I noticed that in my examination this morning. Then he has some interference with the flexion of the thigh, flexion and extension of the thigh. He can lift his thigh upwards, which is flexion, and backwards, which is extension, only partially, and if you exaggerate the motion of flexion it produces a spasm of the muscles in the back.

Q. By exaggerate you mean increase?

A. If you increase the extension of the thigh towards the abdomen it produces a spasm of the muscles in the back, [fol. 74] due to the injury in the back. He has quite a marked point of sensitiveness of pain on pressure, particularly over the right lumbar region; that is, the right lumbar region is usually referred to as the line of the back, what some people call the small of the back; and there is also a disturbance, a slight disturbance, though not as marked

as in the leg, a disturbance of sensation. The whole leg in itself has lost the power, through the injury to the nerves, which makes it impossible for him to lift up that leg only to a certain extent and producing this dragging sensation.

Q. Producing this foot drop?

A. This characteristic foot drop.

Q. Now, in your opinion with reasonable certainty are the conditions which you have described that he is now suffering from permanent?

A. Yes, sir.

Q. That is, it will last all his life?

A. Yes, sir.

Q. Two casts were made for him by order of the physician who treated him in the hospital. They are marked Exhibits 8 and 9. They are duplicates. This one is 9 (indicating). He wears one, and then he takes that off for a day and aerates it, lets it dry, and then he puts on the other. In your opinion with reasonable certainty is it necessary for him to wear this brace?

A. Well, I would have to see the X-rays to say that.

Q. I say assuming the X-rays, of course.

A. Oh, assuming it?

Q. That is what I say.

A. You are assuming the fracture of the——

Q. You haven't read the X-rays?

A. No, I haven't seen them.

Q. That is usually done by radiographers, but I say as-
[fol. 75] suming here that the X-rays show the fracture which we have described, which you say would be a competent producing cause of these conditions of the leg?

Mr. Rockwood: Does he say that?

The Court: I don't think he said it, Mr. O'Neill, that the fracture would be a competent producing cause of those conditions. I don't think you asked him that question.

Mr. O'Neill: All right. I withdraw it and ask another question.

Q. In your opinion with reasonable certainty, assuming that on September 2nd, 1929, this man, then in previous good health, working around a round-house fell and sustained a fracture of the 5th lumbar vertebra at the base of the spinous process and a diffused crushing of the first 2 segments of the sacrum. In your opinion with reasonable

certainty would such an injury be a competent producing cause of the conditions which you have found in this leg and which you have told us about?

A. Yes, sir.

Q. And in your opinion it is the cause?

A. Yes, sir.

Q. Now, I say upon the same assumption, assuming that he had this fall and sustained a fracture of the 5th lumbar vertebra at the base of the spinous process and a diffused crushing of these first 2 segments of the sacrum; assuming then that the doctor in attendance has recommended him to use this brace, in your opinion with reasonable certainty is such a brace necessary for him to wear?

A. Yes, sir. In this kind of fracture a brace is usually used.

[fol. 76] Q. Does it tend, especially when it is so long and big, to take the weight of the upper part of the trunk off the bottom of the spine, the lumbar vertebrae and sacrum?

A. It supports the trunk and takes most of the weight away from the site of the injury.

Q. And transmits it down along the side of the hips?

A. The weight of the trunk is more transmitted to the ilium, the two hips.

Q. Now, I say, would this brace?

A. Yes, if it is properly made it will do that.

Q. And in your opinion with reasonable certainty will he upon the same assumption be obliged to all of his life wear the same or a similar kind of brace?

A. Wear some support, some kind of a brace to support the spine.

Q. Of course, this will be worn out, but one along those lines?

A. On the same lines as that, yes, sir.

Q. Now, in your opinion with reasonable certainty is the condition of his back which you have described not only a competent cause of this weakness, this foot drop, this paralysis, but is it a competent cause also of pain and suffering?

A. Yes, sir, it is always accompanied by some pain.

Q. In your opinion with reasonable certainty is that painful condition permanent?

A. Yes, sir.

Q. And in your opinion with reasonable certainty will this man ever be able to do any work requiring him to exert the strength of his back or his leg?

A. No, sir, he will not.

Q. So to that extent he is permanently disabled?

A. Yes, sir.

Q. Now, when he takes off this brace—you have had him [fol. 77] take off the brace, have you?

A. Yes, sir.

Q. Had him sit down, did you?

A. Yes, sir, sitting on the chair.

Q. And did you observe that when he took off the brace and the weight of the body was no longer supported by this brace up here (indicating), or in the back and around the back, he collapsed?

Mr. Rockwood: Objected to as leading, and I ask the Court to instruct counsel to let the doctor testify to some of these things.

The Court: Objection sustained.

By Mr. O'Neill:

Q. Well, tell us what you observed when it was taken off?

A. Well, on taking off the brace he doesn't seem to be able to support the trunk as he should, and a sort of, I should say, relaxation or weakness—he is not able to hold his trunk up direct.

Cross-examination.

By Mr. Rockwood:

Q. Where are the muscles that hold the trunk up, Doctor?

A. Why, there are various muscles that hold up the trunk. The principal ones are the quadratus lumborom, as they call them, along the spine.

Q. What are they?

A. Ligaments and muscles along the spine—lumbar muscles and soleus muscles.

Q. Let me ask you, Doctor, aren't those muscles up and down the back?

A. Yes.

[fol. 78] Q. And above the small of the back too, aren't they?

A. Yes.

Q. And this injury is in the lumbar region that we are talking about?

A. Lumbar region.

Q. That is the 5th lumbar, isn't it, that you are talking about?

A. 5th lumbar.

Q. And that is way down at the small of the back?

A. No, it is at the junction of the sacrum and the spine.

Q. Yes, at the junction of the sacrum and the spine where the iliae or hip bones come in—isn't it?

A. That is right.

Q. And where the iliae or the hip bones come in, that is the part generally known as the small of the back, isn't it?

Mr. O'Neill: I object to it. First of all it is inaccurate.

The Court: Overruled. It is proper cross examination.

Mr. O'Neill: Exception.

By Mr. Rockwood:

Q. Isn't that right, Doctor?

A. Well, you may call it that—it isn't any definite point, the small of the back.

Q. Now, these sacral segments that you are talking about, they are below the upper edge of the hip bones or the iliae, are they not?

A. Below the upper edge, yes, sir.

Q. And they are protected to a certain extent by the edges of the iliae, aren't they?

A. Well, they have nothing to do with the edges of it.

Q. I asked you if they weren't protected by them?

A. Well, in what way? I don't know just what you mean. [fol. 79] In what way are they protected?

Q. Well, now, you try and follow me, Doctor.

A. They join and hold together—the two ilium form the pelvis, they form a part of the pelvis.

Q. Yes, they are inside of the outer edges of the iliae, aren't they?

A. Well, they are not inside—they are continuous with the ilium.

Q. When you put your hands on your back down there (indicating) you don't feel those two segments so easily, do you?

A. Yes, you can feel them.

Q. Now, these muscles that hold up the trunk, you say, run all the way up and down the back, don't they?

A. Some of them.

Q. And those muscles that are above the 5th lumbar are not involved in this case at all, are they?

A. The nerve supply to those muscles was involved.

Q. The nerve supply is down below those muscles, isn't it?

A. Those muscles get their nerve supply from the lumbar plexus.

Q. From the lumbar plexus?

A. Yes, sir.

Q. And where is that?

A. That begins from way up near where the ribs are, starts at the 12th dorsal, and then includes the 1st, 2nd, 3rd and 4th lumbar.

Q. And we are talking about the 5th lumbar.

A. And that is the sacral plexus involved from the 5th lumbar down.

Q. Now, you want this jury to understand that an injury to the 5th lumbar will affect these muscles that are fed by the 1st, 2nd, 3rd and 4th lumbar and the dorsal vertebra too?

Mr. O'Neill: That question is improper.

[fol. 80] The Court: I will sustain the part which says "You want the jury to understand." The other part I allow, of course.

Mr. Rockwood: I will withdraw the question.

Q. Do I understand you, Doctor, that the muscles that you speak of as holding up the trunk are fed by nerves emanating from the dorsal region and from the 1st, 2nd, 3rd and 4th lumbar region?

Mr. O'Neill: We object to that as indefinite, unless he means the back is supported only by those muscles. Now, the witness didn't say that.

The Court: Objection overruled.

(The question was read by the stenographer.)

A. Well, that is rather indefinite. I can't answer you that way. You ask me if the muscles hold up the back, and they do, but there is other things that hold up the back besides. You have a lot of ligaments that hold up

the back. Then so far as the nerve supply is concerned, we have nerves emanating between the vertebrae. In this particular case the ones of interest would be from the 12th dorsal to the 5th lumbar and the sacrum.

Q. Let me ask you, in this case are the dorsals involved?

A. Well, the injury described at the present time——

Q. Well, I am talking about the present time. Have you ever heard of any injury to the dorsal region at all?

[fol. 81] Mr. O'Neill: We object to this. He says he is describing this injury.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: I didn't say that. I am trying to tell you the 12th dorsal sends a branch down which connects with the trunks coming from the lumbar, so therefore anything as high as that could be affected by an injury to the lumbar. And then the lumbar nerves, 1st, 2nd, 3rd and 4th, which forms the lumbar plexus, also sends a branch down to the sacral, therefore they all intertwine and one goes into the other, so that any injury to any nerve could be influenced by more than one position in the spine.

Q. So now, if I understand you correctly, you say now that an injury to the sacral region can have its effect anywhere on the body?

A. Not anywhere on the body, I didn't say that.

Mr. O'Neill: That question is unfair. I object to it.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: An injury to the sacral region may give you symptoms as high up as the lumbar, almost as high up as the ribs. I didn't say any part of the body though—I was talking about the back.

By Mr. Rockwood:

Q. So, in other words, to come right down to it, you say that the injury to the 5th lumbar will produce weak-[fol. 82] ness in the back muscles. Is that right?

A. It will produce some weakness in those muscles, some of the fibres going to those muscles.

Q. Now, in the rendering of these opinions you have assumed simply that there was a fracture there, haven't you?

A. I assumed that in the question; yes, sir.

Q. Yes. You haven't made any assumption as to whether that fracture was cured, or not, have you?

A. Well, that is a little indefinite, Mr. Rockwood. What do you mean by cured?

Q. Whether it healed, Doctor? What is generally known as cured?

Mr. O'Neill: I object—what is generally known.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: When you say a fracture is cured or healed it is rather indefinite, because they may heal in various directions and may cause various pressure or various damage to various organs, dependent on the location of the fracture.

By Mr. Rockwood:

Q. But still you haven't answered my question, Doctor, as to whether you made any assumption as to whether this fracture had been cured.

Mr. O'Neill: We object to that, if your Honor please, because that isn't capable of making a definite assumption.

The Court: Objection overruled.

Mr. O'Neill: Exception.

[fol. 83] The Witness: I am assuming in my answer the fact that the man did sustain a fracture in the lumbar vertebræ.

Q. And no assumption as to the outcome of that fracture as to whether it was cured or not?

A. There was nothing said as to the outcome.

Q. I understand that. I ask you whether you made any assumption in your own mind?

A. I don't remember making any assumption as to whether it was cured or not.

Q. Well, you gave your opinion, didn't you?

A. I gave my opinion that it was possible for that condition to exist from a fracture of the lumbar vertebræ.

Q. Well, in giving that opinion didn't you give any con-

sideration to the question as to whether these alleged fractures had been mended or not?

A. Well, they have to mend in some way but they don't always mend the same way. They may mend in a good position or they may mend in a bad position.

Q. And that you didn't give any consideration to?

A. I couldn't give any consideration to that because I didn't know how this particular fracture mended.

Q. And you don't know what kind of a fracture it was, do you, Doctor?

A. Not from my own particular knowledge, no.

Q. Now, it could only mend in one way if it was not broken apart, couldn't it?

Mr. O'Neill: Now, we object to that—the consideration of healed is utterly indefinite so far as fractures of the vertebræ is concerned because—well, I won't explain the reasons here. But it is indefinite.

[fol. 84] The Court: Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: No, it could mend in many ways.

By Mr. Rockwood:

Q. It could mend in a wrong position if there was no breaking apart?

A. It could mend so it would cause a lot of damage, and it could mend so it would cause very little damage.

Q. I didn't ask you that, did I?

A. You asked me how it could mend.

Mr. Rockwood: I ask the witness to answer my question. He isn't answering me.

Mr. O'Neill: I object to that. He is answering him.

The Court: I think the counsel should ask questions and if he doesn't answer them then you can move to strike it out.

By Mr. Rockwood:

Q. Now, Doctor, would it change your opinion at all if subsequent X-rays were negative as to any pathology of the 5th lumbar and upper 2 sacral segments?

Mr. O'Neill: I object to that as indefinite in form.
The Court: Overruled.
Mr. O'Neill: Exception.

[fol. 85] The Witness: When you say negative, Mr. Rockwood, just what do you mean?

By Mr. Rockwood:

Q. I mean it showed no evidence.
A. Showed no fracture at all?
Q. Showed no evidence of fracture.
A. Yes, it would change my opinion then, that is, as far as the question I answered for Mr. O'Neill was concerned—not as far as my examination was concerned.

Mr. Rockwood: Now, I move to strike out all this volunteered part.
The Court: Motion denied. He is amplifying his answer.
Mr. Rockwood: Exception.

By Mr. Rockwood:

Q. Now, Doctor, in making and expressing these opinions today have you taken into consideration at all that these fractures to the sacral segments were only to the shell of those segments?
A. Yes, sir.
Q. You assumed that, did you?
A. I assumed that.
Q. Did you take into consideration, Doctor, in giving these opinions the fact that improvement in this man's condition had been noted within 3 months of the date of his accident?

Mr. O'Neill: That is certainly improper to ask. It only seems to me to illustrate the vice of the other testimony, to [fol. 86] ask the doctor to assume some opinion testified by somebody else, particularly a doctor hired and paid by the railroad company.

The Court: [illegible] trouble with your objection is that on cross examinat[illegible]y have got a right to assume a hypothesis even if it [illegible] proven. Objection overruled.
Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: I don't think that would make any difference.

By Mr. Rockwood:

Q. Did you take that into consideration?

A. Yes, because you would expect some improvement.

Q. Did you take into consideration that improvement had been noted?

A. I didn't give it a thought at the time, but you would expect some improvement in 3 months after an injury.

Q. That improvement would be extending over the first 3 months after his accident?

A. Well, I say that because we would expect improvement after an injury of that kind, because with a fracture, assuming that there was a fracture of the lumbar vertebra, you usually have some hemorrhage in and around the spinal cord, and that causes a lot of damage at the time it happens, and then it is absorbed and when that blood is absorbed it relieves the pressure on the nerves and you get an improvement in those nerves which have the pressure removed from them.

[fol. 87] Q. And that is what occurred?

A. Evidently that is what occurred if he did show improvement within 3 months.

Mr. O'Neill: I object to that and except to it on the same ground to protect our exception to the admission of such testimony from the other doctor.

The Court: Same ruling.

Mr. O'Neill: Exception.

By Mr. Rockwood:

Q. Now, in expressing your opinion, Doctor, did you take into consideration whether or not there was any encroachment on the foramenae in the sacral region?

A. Encroachment of the foramenae in the sacral region?

Q. Yes, in the region of this alleged injury?

A. Well, I wouldn't say exactly that I would say that. I have taken into consideration that the fracture is there, the cause for the injury is there, and then the rest of my opinion would be based upon my own findings.

Q. In other words, do I understand you to say now that you did not have in mind or take into consideration any question as to an encroachment on the foramenae?

A. I don't see where that would have any bearing at all on this thing.

By the Court:

Q. What is the foramenae, Doctor?

A. The segments of the sacrum—there is 5 segments of the sacrum which really merge into one bone, called the sacral bone. The nerves of the sacral plexus, which arise [fol. 88] in the spinal cord, in the sacrum, they divide and then they merge—there is anterior and posterior roots. The anterior roots merge through the foramenae to the anterior part of the bone, and the posterior roots merge through the posterior foramenae of the bone. Now, if you crush the foramenae of course it will encroach upon those particular nerves that you crush.

By Mr. Rockwood:

Q. The foramenae then are the orifices or openings through which the nerves pass; is that right?

A. That is right.

Q. And as I understand you to say now, there are posterior foramenae, that is, openings toward the back, and there are anterior foramenae, or openings toward the front in the sacrum. Is that right?

A. Yes, that is right.

Q. Now, I ask you whether you had in mind in giving your opinion whether there was any encroachment on those openings or foramenae?

A. But you will have to say which openings you are referring to, there is a great number of foramenae there and each one affects different nerves.

Q. All right, Doctor, you have 2 of the segments of the sacrum involved in the hypothesis which you are working on, don't you?

A. Yes, sir.

Q. The first 2 segments of the sacrum. And as I understand it there are 2 openings for each segment, both a posterior and anterior. That is correct, isn't it?

A. Yes, sir, between the segments; yes, sir.

Q. Now, I ask you whether you considered or had in mind in giving your opinion whether or not there was any en- [fol. 89] croachment of those 4 openings that I have described, both anterior and posterior?

A. Well, I will have to answer you this way——

Q. Well, can't you answer me yes or no to that?

A. No, I can't.

Q. I mean, you can say whether you did consider it or not.

A. I considered just the symptoms that I found, and they correspond to an injury to the nerves coming out of those foramenae.

Q. Yes. Well, now, I am asking you whether your opinion is that there is an injury to those foramenae?

A. There is an injury to the nerves coming from those foramenae, yes.

Q. I didn't ask you that, did I?

The Court: You don't mean an injury to the foramenae?

Mr. Rockwood: I do indeed, sir, being an encroachment of the foramenae, a closing up of the orifice.

The Court: The foramenae are simply holes.

Mr. Rockwood: Well, the injury to the foramenae might cause the encroachment.

The Court: Injury to the hole?

Mr. Rockwood: Injury to the edge of the hole, yes, sir.

The Court: Now you are putting it different.

By Mr. Rockwood:

Q. Doctor, do you express the opinion from what you have observed that there is an encroachment of the fora-
[fol. 90] menae in this sacral region?

A. Not necessarily an encroachment. I would say that there was from the examination, that it shows an injury to the nerves coming out of the foramenae of the first and second sacrum.

Q. And is the condition now due to a pressure created by a change in the shape or size of those foramenae?

A. Not necessarily. It could be due to an injury to the nerves at the time of the accident. It could be due to a hemorrhage in the nerve at the time of the accident which subsequently would absorb. I don't know just what part of the blow or what part of the injury produced the injury to the nerve. It can be either the crushing of the bone, the obliteration of the foramenae, the crushing of the edges of the foramenae, hemorrhage into the nerve sheath, or pressure from some other part of the bony pelvis of the nerve root as it emerges from the spinal cord. In other words, any injury to that nerve, which could be caused by various

ways, would produce symptoms that this man complains of or shows.

Q. So that your opinion of the situation is that here is an injury to the nerve; is that right?

A. There is an injury to part of the lumbar sacral plexus.

Q. Now, let me ask you this, Doctor: The nerves that come out through the posterior foramenae of the sacral region are sensory nerves only?

A. Mostly sensory, yes.

Q. Mostly or only?

A. Well, there are some motor fibres in some of the nerves of the posterior branches. Then the anterior branches are mostly motor, they mostly consist of motor fibres.

Q. So that you say that the posterior nerves are mixed; [fol. 91] is that right?

A. Yes, some of them are—not all.

Q. I am talking about the nerves that come through the first 2 sacral foramenae.

A. Yes, they are mixed. They have both motor and sensory fibres.

Q. They are mixed?

A. Yes, sir.

Q. The posterior nerves are mixed?

A. Yes, they are.

Q. And that you are sure of?

A. They have motor fibres, yes.

Q. And the anterior nerves that come through the first 2 sacral foramenae, are they mixed too?

A. Yes, they have also sensory and motor fibres.

Q. They are mixed?

A. Yes.

Q. Now, these motor fibres that come through the posterior foramenae, do they feed the leg, Doctor?

A. No.

Q. They don't feed the leg at all?

A. Not except probably some very small fibres may go down toward the leg and abdomen.

Q. So the real nerves which are affected in this man's leg, as you testify, are the nerves that come through the anterior or front holes in the sacral region?

A. Chiefly.

Q. With the exception of very minor——

A. (Interrupting) Some fibres of the posterior supply the muscles of the hip, and some of the organs of the body, inner organs of the pelvis.

Q. You haven't seen these X-rays, have you, Doctor?

A. No, sir, I have not.

Q. If the X-rays showed that there was no bony encroachment of the foramenae that would eliminate one possible cause of this man's condition, wouldn't it?

A. Yes.

[fol. 92] Q. And if these X-rays taken 8 months after the injury showed no pathology of the sacrum or 5th lumbar wouldn't that eliminate another possible cause of this condition?

Mr. O'Neill: I object to the form of that question.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: Well, the X-ray itself wouldn't mean a thing, Mr. Rockwood. You could still have an injury to the nerve without the X-ray showing it. Even originally you could have a very severe injury of a nerve with paralysis without an X-ray showing a thing.

Q. But it would eliminate the possibility of a bony condition?

A. It would only eliminate that one thing, yes.

Q. And it would eliminate the possibility of a bony condition being the cause of this loss of muscular power that you have described?

A. Surely if it wasn't there it couldn't cause it, if the X-ray didn't show it.

By Mr. O'Neill:

Q. He is only saying it was negative. The fact that an X-ray is negative doesn't necessarily prove it isn't there, does it?

A. No, sir.

Mr. Rockwood. That is objected to.

The Court: Oh, I will let it stand. It is simply in anticipation of redirect.

[fol. 93] By Mr. Rockwood:

Q. Now, Doctor, would it alter or change your opinion if the patient himself admitted improvement some 3 or 4 months after this injury?

A. No, that wouldn't make any difference.

Q. You would expect that improvement?

A. Yes, from the original condition I would expect improvement the first 2 or 3 months.

Q. And you would expect it then to stop, is that it?

A. Well, it would improve only dependent on the amount of damage done to your nerves. The temporary damage would improve. The temporary damage done to your nerves would improve by the fact that blood absorbs, but any permanent damage done to the nerve fibres wouldn't improve.

Q. Those nerve fibres would never be replaced?

A. Never, not the ones that had been destroyed.

Q. There never would other nerve fibres take their place?

A. No, not if they were destroyed.

Q. Are you a neurologist?

A. No, sir, I am not. I am a surgeon.

Q. Have you ever made any particular specialty of the study of nerves, neurology?

A. No, sir.

Q. Neurology is the study and treatment of the nerves, isn't it?

A. Yes.

Q. That is a recognized branch of medical practice, isn't it?

A. Yes, sir.

Q. And a branch in which you have not specialized at all?

A. Well, the nerves themselves come under anatomy, too, you know. Neurology would be only the treatment of nervous conditions, usually limited to the treatment of nervous diseases; but the condition of the nerves is a part of your general medicine and surgery, somes under anat-

[fol. 94] omy. We are supposed to know our anatomy if we are doing surgery.

Q. The treatment of injuries of the nerves falls under the head of neurology, doesn't it?

A. The treatment, yes, sir.

Q. And that is a branch in which you have not made any specialty?

A. No, sir.

By the Court:

Q. Except so far as it relates to surgical treatment?

A. Yes, sure, as far as relates to surgical treatment and as far as we have to know in our general work.

By Mr. Rockwood:

Q. Now, is this brace in any way connected in its use with the fracture that you assumed, in your opinion (indicating Exhibit 9)?

A. Yes, sir, it is. They usually use them for fractures of the spine.

Q. Isn't that brace also known at times as a splint?

A. Well, you can call it a splint. It is a form of a splint.

Q. When you have a broken arm or a broken leg you put that arm or leg in splints, don't you?

A. Yes, sir.

Q. And here you have had a diagnosis of a fracture of the spinous process of the vertebræ, so you put it in a splint. Isn't that the theory?

A. The theory is to immobolize the whole spine if there is any fracture there.

By the Court:

Q. Well, is that the theory on which he wears that now? [fol. 95] A. Well, in the spine particularly. It supports a good deal more than other parts of the body. It supports the whole trunk, and after fractures of the spine he generally loses a good deal of the support, and a splint of that kind will support the spine and make the patient comfortable; whereas without the splint the weight of the trunk would be a constant pressure all the time and would tend to cause pressure at the site of the fracture and thereby cause pain.

By Mr. Rockwood:

Q. So that this brace is directly connected with and in use for the fracture?

A. Well, it can be used for various purposes. Braces like that are used for other conditions also, but in this particular case I assume it is used for that trunk.

Q. Now, you spoke not long ago of the spinal cord. Isn't it a fact, Doctor, that the spinal cord ends around between the 1st and 2nd lumbar, or between the last dorsal and the first lumbar, which is it?

A. Well, the end of the corda equina goes toward the sacrum, but the fibers go down lower than that.

Q. I didn't ask you that, did I? I asked you where the spinal cord itself ended.

Mr. O'Neill: That is the answer. The answer is that these are continuations of it, as he says.

The Court: Well, if it is an objection the objection is overruled.

The Witness: The cord ends in the corda equinum, in the sacrum, near the lumbar, but the nerves continue down- [fol. 96] wards to the legs, so that the nerves go all the way down to the end of your feet. Are you referring to the spine itself or the nerves from the spine? I mean, do you refer just to the spinal cord, or do you refer to the nerves that emerge from the spinal cord?

By Mr. Rockwood:

Q. My question, sir, was confined strictly to the spinal cord.

A. The spinal cord ends around near the 4th or 5th lumbar.

Q. The 4th or 5th lumbar?

A. Yes.

Q. The spinal cord ends there?

A. The corda equinum—it begins to go out as a fan-shaped affair. There is no particular spot you can say it ends. We generally refer to it as ending there.

Q. Now, Doctor, won't you please tell me where the spinal cord itself—I am not speaking of the corda equina or any nerves that emanate from the spinal cord—I am speaking of the spinal cord. Will you tell me where that ends?

A. The spinal cord is just the general name for the whole thing. If you don't tell me what part of the cord you mean I can't answer your question. The nerves come out from the body of the spinal cord. The corda equina is about the end of the spinal cord.

Q. Then where does the corda equina begin?

A. Along about the 5th lumbar, 4th or 5th lumbar.

Q. Well, now, which?

A. Well, it isn't always the same on individuals. There is many cases of anomalies where they stop up much higher than that, and some a little bit lower.

Q. Now, where the corda equina starts does the spinal cord itself end?

A. No, I wouldn't say the cord ends there. The corda [fol. 97] equina is a part of the cord, it is nerve fibres coming from the spinal cord.

Q. And you say that the change from the spinal cord to the corda equina occurs around the 4th or 5th lumbar vertebra, is that true?

A. Approximately. It isn't the same on every individual.

Q. But that is approximately correct?

A. Approximately, yes.

Q. And isn't it the fact that the spinal cord ends and the corda equina begins around the first lumbar?

A. No, I think it is down lower than that in most cases. As I say, you can have many anomalies as far as where the corda equina begins. Some children are born without any corda equina.

Q. Well, I am not speaking about anomalies or anything unusual. I am talking about the usual, Doctor?

A. Well, the usual—I am giving you the average.

Q. And the average is the 4th or 5th?

A. About the 4th or 5th.

Q. That is positive and definite in your mind?

A. Yes.

Q. Do you know what treatment this man was receiving last July when you saw him?

A. No, sir, I do not.

Q. Do you know today when you saw him whether he has been receiving any treatment?

A. No, sir, I do not, except a brace.

Q. Except the brace. Don't you know as a fact that he is not receiving any treatment?

A. No, sir, I do not.

Q. Now, Doctor, when you said the injuries that this man received, assuming that those injuries were a fracture [fol. 98] of the 5th lumbar and a fracture or diffused crushing of the shell of the first and second sacral segments, you testified that those injuries were a competent producing cause of the present condition, did you?

A. Yes, sir.

Q. And your opinion would not be altered on that if those fractures had healed in place; is that right?

A. No, sir, it would not.

Q. Well, then, Doctor, let me ask you; isn't it the injury to the nerves that you are really talking about?

Mr. O'Neill: I object to the form, as to what he is really talking about. He is talking about it all.

The Court: Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: There is an injury to various nerves. Do you mean any particular nerve?

Q. Well, what nerves have been injured?

A. The nerves supplying the dorsum of the foot.

Q. Where does that come from?

A. They come from the sacral plexus. The sacral plexus forms branches and join and form a large nerve called the sciatic, and that divides into two branches, the tibula and the peroneal, about the middle of the thigh. Then it runs down the back of the thigh to the popliteal space, the back of the knee. And then it divides again and the tibula sends off two branches and the peroneal sends off [fol. 99] two branches. Then from those branches you have ends or little bits of branches that go to all the muscles of the leg and the foot. Now the injury may be up near the spine and affect just the fibres that correspond to those particular muscles.

Q. Well, now, the injury that you speak of occurred in this whole neighborhood, the sacral region, didn't it?

A. You mean the injury you are speaking of?

Q. The injury you are assuming in all this testimony?

A. Yes.

Q. And it was an injury to the posterior aspects of those segments of the spine, wasn't it?

A. That was the injury, yes.

Q. And to the shell only, wasn't it?

A. Yes.

Q. Now, this great sciatic nerve that you speak of comes out of the anterior foramenæ, doesn't it?

A. No; your sciatic nerve is formed from the trunks that come out of the intervertebral formamenæ. They join together and form the sciatic and then the other nerves are a continuation of that sciatic.

Q. And those trunks come out of the anterior foramenæ?

A. Out of the anterior foramenæ of the vertebræ from the 5th lumbar and second, first and third sacral.

Q. And by anterior foramenæ you mean the openings in the front side of the spine?

A. Yes, front.

Q. Now, Doctor, in your experience——

A. Excuse me. You said the anterior foramenæ, the front part. I thought you were talking about the anterior fibres or anterior roots coming through the intervertebral space. There is no anterior or posterior in the lumbar. You are talking about the sacral or——

[fol. 100] Q. Sacral.

A. In the sacral they come out through the anterior foramenæ, that is right.

Q. As a matter of fact, those trunks that go into the sciatic nerve don't come out of the 5th lumbar at all, do they?

A. There is a branch from the 5th lumbar also comes out.

Q. They come simply through that canal?

A. Come through the intervertebral space between the 5th lumbar and the sacral. That is one part of the sciatic nerve.

Q. Now, in your experience have you seen injuries to nerves that have been cured?

A. Yes.

Q. In fact, if you hit your elbow, your funny-bone, you get that sensation, and that is an injury to your nerve, isn't it?

A. Yes, that is an injury.

Q. And isn't it a fact that symptoms somewhat similar to this man's condition are very often found in childbirth?

Mr. O'Neill: Objected to as immaterial. It has got nothing to do with the case of a man who was working and was all right up to the moment of the accident, and then had these conditions. What is the idea of going into childbirth about it?

The Court: Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness:

Q. What do you mean?

Mr. O'Neill: What does he mean in childbirth—to the child or the mother?

[fol. 101] By Mr. Rockwood:

Q. Through injuries to or pressure on the nerves, the sciatic nerve.

A. Injury to a child in childbirth?

Q. No, to the mother?

The Court: Well, I will have to sustain that, because he is not a mother.

By Mr. Rockwood:

Q. Now, as I understand it, Doctor, you place this injury to the fibres of the nerve in the trunks that join to the sciatic nerve; is that right?

A. Exactly.

Q. It is not in the spinal cord; it is in the fibres of those nerve trunks?

A. It is in the fibres of the nerve trunk which emerge from the spinal cord—they are actually a part of the spinal cord.

Q. But the injury is to the nerves; is that right?

A. The injury is to the nerves, and it may be any part of the nerve from the spinal cord down.

Q. The injury may be in any part of the nerve from the spinal cord down?

A. Yes, sir.

Q. You can't locate the place of the injury, can you, then?

A. Not that particular case, unless you give me some particular injury you are talking about.

Q. I mean it must be in the corda equina from the location of these alleged fractures, mustn't it?

Mr. O'Neill: Do you mean in this case?

Mr. Rockwood: Yes.

The Witness: No, any injury to a nerve at the upper end [fol. 102] near the spinal cord, you injure the nerve there and the whole nerve dies, and if the nerve goes down to the foot or leg it becomes paralyzed down to the foot. It depends where the nerve goes.

Q. Was the scene of this injury below the spinal cord, Doctor?

A. Certainly it was below—it was in the nerve coming from the spinal cord.

Q. Therefore this injury must be to the nerve below the spinal cord?

A. No, the injury may be anywheres from the spinal cord down, the nerve coming from the spinal cord to wherever the nerve goes. I could maybe explain it a little bit better—I could liken it to a telegraph wire or electrical wire. If you cut off the current at the main station then the whole wire is dead.

Q. And if you have an injury to the main station that kills all the radiating wires?

A. Anything that comes below that. Anything above that is all right.

Q. Yes. But if you have just an injury to one wire you can go out and replace that wire, can't you?

A. A wire you can; yes.

Q. Now, isn't it a fact, Doctor, that fibres of the nerves can be replaced in just the same way, and nature does it?

A. How can you replace the nerve fibres? I never heard of fibres being replaced.

Q. Never heard of that?

A. Never heard of that.

Q. In all your professional experience you never heard of the nerve fibres being restored?

A. Not after they are once destroyed they can't be restored. If you are talking about injury to the nerve fibres

that is a different proposition. You can injure a nerve [fol. 103] fibre and it may be restored, if it is not destroyed, but if it is destroyed you can not. A nerve-fibre will never regenerate.

Q. So if this nerve fibre here is not killed it ultimately should be restored; isn't that right?

A. Whatever part of it is not killed may be restored yes.

Q. And of course if that nerve fibre here is restored this loss of muscular power will disappear, will it not?

A. Well if the injury occurred the date you say it did, and if the nerve——

Q. Now, wait a minute, Doctor. You just answer my question.

A. I can't answer unless I get the element of time in there.

Q. That is your answer to my question?

A. If the injury occurred the time you say it did, then any fibres which were only partially injured should have been rehabilitated, should have been restored by now. Whatever fibres have not been restored since that time I don't believe ever will be restored.

Q. You have never heard of a case of this kind taking more than 13 months to be restored?

A. You are talking about the case now. I am talking about the nerve.

Q. I am talking about the nerve.

A. No nerve will ever be restored if it is paralyzed for over a year. If the nerve is dead those fibres will not be restored.

Q. We are agreed on this fact, that if the nerve is dead you can not bring it to life.

A. Yes. Now, when you say a case——

Q. But if a nerve is injured——

Mr. O'Neill: Let him finish his answer.

The Court: Yes; finish the answer.

[fol. 104] The Witness: I was going to ask if you refer to a case like a part of the body, such as a leg, then you have got to take into consideration that there is thousands of nerves goes to that leg, and you may get a good recovery in one part which overcomes the paralysis in another part. In other words, you can get recovery in some of the muscles but not the others. But if you are talking about nerve

fibres, then I say whatever nerve fibres are dead can not be restored.

Q. But those that are only injured may be restored?

A. Those that are only injured may be restored, yes, if they are only partially injured.

Q. And the injury may take more than 12 or 13 months to be restored?

A. No, I don't think it will take that long.

Q. Your professional opinion is that if it isn't done in 13 months it never will be done, is that it?

A. Injured nerve fibres should recover much sooner than that.

Q. They should?

A. Yes.

Q. But I ask you if it isn't possible that they take longer?

A. Well, I should say as a rule that they do recover sooner than that.

Q. As a rule?

A. As a rule., It would depend on the amount of traumatism to those nerve fibres. You can have an injury recover in one day.

Q. So if this happened to be a little unusual there might be still a recovery here 6 months from now?

Mr. O'Neill: Objected to as indefinite, not indicating what part as to which it is claimed there might be possible recovery.

[fol. 105] The Witness: I can answer that this way; whichever fibres were injured slightly would recover more promptly—those which were injured slightly would take less time to recover. Fibres which were injured more severely would take longer time to recover, and then those which were injured totally, why, they wouldn't recover.

Q. Now, the ordinary treatment of an injury to a nerve is to try to heal that nerve, is that right?

A. I don't know that there is any treatment for those conditions at all that would do any good. I think nature takes care of it.

Q. You have never heard of massaging?

A. Yes, there is a lot of treatment used for it, I didn't say there wasn't treatment used for it. I say that usually nature takes care of them. They heal up gradually, those

that are going to get healed, and there is treatment used to facilitate and to help nature along. They have got methods such as diathermy, heat, massage, exercise, and support.

Q. And those are the normal treatments for this?

A. Well, I would call it a way of helping nature to restore the lost function.

Q. And nature will restore the lost function if it is possible to restore it?

A. If it is possible, yes, sir, it does.

Q. Now, if this alleged fracture is restored by nature, Doctor, is this splint necessary all his life?

A. Well, that is too indefinite, Mr. Rockwood.

Mr. O'Neill: I object to that as assuming only a fracture. The doctor has testified much beyond a fracture—it is the result of the fracture, all these conditions.

[fol. 106] The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: I should say that is rather indefinite. I couldn't answer that. It would be too indefinite, because there is a hundred different conditions and different kinds of fractures and different kinds of healing and different kinds of position and different kinds of result.

By Mr. Rockwood:

Q. Of course, we are talking about this plaintiff in this case and the injuries that have been testified to.

A. I just testified that if there was a fracture of the lumbar vertebra, not what kind of a fracture or what the end results were.

Q. You didn't even testify to a fracture of the spinous process of the lumbar vertebra, but the vertebra itself?

A. No, I based my answer on the assumption that there was a fracture of the lumbar vertebra, but I didn't specify as to the end results or the particular results of this particular case. That I don't know.

Q. Well, all of your testimony has been based on the fact that there was a fracture in the lumbar vertebrae, not in the spinous process?

A. No, my testimony has been based upon the fact that there was a fracture, plus the findings of a paralysis which

comes from the main nerve roots which emerge through that particular vertebra.

Q. Let us understand each other. Did you assume that there was a fracture only of the spinous process?

A. Well, I assumed that there was a fracture there. When you put the question to me you asked me to assume [fol. 107] that there was a fracture there, but you could have the same condition without a fracture. The fracture itself doesn't mean anything.

Q. The fracture itself doesn't mean anything?

A. I mean these particular symptoms—you don't have to have a fracture to get these particular symptoms.

Q. No, but a fracture is the cause of that brace, isn't it?

A. The fracture is not the cause of the brace.

Q. That causes the necessity of the brace?

A. I don't know why the brace was put on. I wasn't treating the man for the fracture.

Q. You don't know why it was put on?

A. I say I don't know why that particular man put that brace on in this particular case, because I wasn't treating the man.

Q. You are superintendent of St. Joseph's Hospital, aren't you?

A. I am not superintendent. I am the attending surgeon. I was president of the hospital.

Q. Weren't you superintendent too?

A. No, sir, I was not superintendent of St. Joseph's Hospital. I was superintendent of the City Hospital.

Q. You were superintendent of the City Hospital?

A. Yes.

Q. How long ago was that?

A. Oh, that is quite a while ago, about 10 years ago.

Q. Were you there as superintendent for quite a while?

A. Well, I wasn't in the hospital. I was supervisor of that particular hospital.

Q. The superintendent of a hospital is the administrator of a hospital, isn't it?

A. Of this particular hospital, yes, but that hadn't anything to do with the work I do there. The work I do is at [fol. 108] St. Joseph's Hospital. I am attending surgeon of the hospital.

Q. Do you testify in court a great deal, Doctor?

A. Not so very much.

Q. You have testified a good many times for Mr. O'Neill in his cases, haven't you?

A. Oh, two or three times this year.

Q. Doctor, is it possible to simulate a muscular spasm?

A. That would depend upon the individual person. I don't think I could simulate it. Some people might be able to.

Q. But your opinion, Doctor, is that this man will have to wear this brace all the rest of his life?

A. I think he will have to wear that brace with the injury that he has at the present time.

Q. The injury being an injury to his nerves?

A. An injury to the spine and the nerves.

Q. In other words, if it was an injury to his nerves alone then he wouldn't need this brace?

Mr. O'Neill: I object to that.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: Well, if it was just an injury to the nerves I don't think you would need the brace—in most cases you wouldn't need the brace.

Redirect examination.

By Mr. O'Neill:

Q. You say the conditions that you yourself found, that is, you are not taking anybody's word for that, as to whether or not there was a fracture at the lumbar vertebra or the crushing of these two segments either—As to what you found yourself, that you saw, is that right?

[fol. 109] A. Well, what I say myself and what I found myself in the examination of this man, I say he has an injury to the nerve roots of the lumbar sacral plexus.

Q. And what you say, so far as the fracture here, which has been shown by the other testimony, that is, the X-rays, the fracture of the 5th lumbar and the first 2 segments of the sacrum, all you say is that an injury there which would also cause that fracture would be a competent producing cause of all this nerve injury, nerve root injury that you have testified to; is that right?

A. Yes, assuming a fracture there, that would cause all that injury.

Q. In other words, is the fracture consistent with all the conditions that you have found?

A. It is.

Q. Now, you have stated that when there is a fracture of this kind there frequently is a hemorrhage caused by the fracture, and also sometimes a hemorrhage in the cord; that after a while that may be absorbed, relieving to some extent the nerves which are merely injured and not destroyed. Now, when a hemorrhage is absorbed, a hemorrhage in the cord absorbed, doesn't it leave scar tissue?

A. It depends on the sort of hemorrhage. Yes, it may do that.

Q. Now, you say part of the sciatic nerve itself comes out of this intervertebral space between the 5th lumbar and the sacrum. Is that right?

A. Yes, the uppermost root of the sacral plexus comes out of the 5th intervertebral space.

Q. And that is the very place which is referred to in the assumption that I have made to you based upon the other doctor's testimony as to X-rays?

A. Yes, sir.

[fol. 110] Q. In other words, a fracture of the 5th lumbar and a crushing of the next 2 segments underneath it, is that right?

A. That would correspond to the sacral plexus.

Q. That would be just about the place?

A. Corresponding to the sciatic nerve, yes.

Q. Now, you have been asked whether you were superintendent of a hospital. You have never been superintendent of a hospital in just the administrative capacity?

A. No, that was just one of my duties as Deputy Health Commissioner of the City. I was given the superintendency of this particular hospital. But that was not the hospital I do my work at.

Q. You do your work in what hospital?

A. I do my work in St. Joseph's Hospital, surgical work, and the Yonkers General Hospital.

Q. But as Deputy Health Commissioner it was your duty to supervise also the public city hospital?

A. That is right. That was simply one of the hospitals I had charge of in an executive capacity, but not where I done my work.

Q. Then later you became president of the St. Joseph's Hospital?

A. Yes, sir, I have been president of St. Joseph's Hospital for two years.

Q. And that is one of the great hospitals in the City of Yonkers?

A. Well, I think it is a good hospital. It is one of the hospitals in Yonkers.

Q. One of the largest, anyhow?

A. One of the largest.

Recross-examination.

By Mr. Rockwood:

Q. This nerve that comes out of the 5th intervertebral space, Doctor, in comparison with the nerves that come out [fol. 111] of the sacral foramenæ is very small, isn't it?

A. Well, it is smaller than the ones that come out of the sacrum. The ones that come out of around the first and second sacral are heaviest, they are thickest. Then they decrease upwards, and from the lumbar down they increase in size. And from the sacrum down they decrease.

Q. So the part that came out of this 5th intervertebral space that you referred to was a comparatively small part of the great sciatic nerve?

A. Well, it is part of the nerve. It is a little bit thinner in diameter than the next nerve, the first sacral and the second sacral.

Q. Isn't it a great deal smaller?

A. No, not the 5th lumbar. The other lumbar nerves are smaller—they get smaller as you go up; but I don't think the size means anything. When I say smaller, it is just a matter of parts of a millimeter in circumference—just a little thinner or a little thicker.

Q. But, as a matter of fact, that is a small part of the great sciatic nerve that comes out through the 5th intervertebral space, isn't it?

A. It is one of the branches of the sciatic.

Q. Now, let me ask you something, Doctor. Were you assuming all through your testimony that the first and second sacral segments were crushed?

A. No, I was not assuming that. I told you I was going by the results of my examination also. I wasn't just taking

the assumption. I am going by the result of my examination of this man. He has a paralysis, an injury to the nerves.

Q. Now, wait a minute, Doctor. Just answer my question now.. Did you make the assumption in expressing your opinion that the first and second sacral segments were crushed?

A. Yes, I assumed that in the question.

[fol. 112] Q. Did you assume that the body of the 5th lumbar vertebra was fractured?

A. I don't know whether Mr. O'Neill said that in his question or not.

Q. I asked you whether you assumed it?

A. I assumed the question as he put it to me, but I don't remember just how he put it.

Q. I am asking you, in giving your professional opinion here, whether you assumed that the body of the 5th lumbar vertebra was fractured?

A. No, not the body—nothing mentioned about the body being fractured.

Q. What part of it did you assume was fractured?

A. The question I was asked was to assume there was a fracture of the base of the spinous process of the 5th lumbar vertebra, and a crushing of the first and second segments of the sacrum.

Q. So by crushing—Now, I want the jury to understand what you are talking about—by crushing you mean the shell of those first and second segments was broken in, do you?

A. Well, a crushing can be that, of course, just like a blow—may be very light or very heavy.

Q. Just tell the jury, won't you please, how much of a crushing you have assumed in your opinion?

A. I don't know how I can express the degree of crushing except you want me to express it as moderate or severe.

Q. Tell the jury, they are interested, sir.

A. Well, there wasn't anything specified as to the amount of crushing. I don't see as I can tell you how much.

Mr. O'Neill: Tell them what?

[fol. 113] The Court: What he assumed.

The Witness: I based it on the assumption there was a crushing of the bones there.

By Mr. Rockwood:

Q. A crushing of the bones?

A. Crushing of the first and second segments of the sacrum.

Q. I ask you if you mean a crushing of the shell?

A. Well, the shell is a part of the bone.

Q. You mean the whole bone was crushed?

A. I couldn't tell what degree unless you specify the degree.

Q. Well, you made the assumption, Doctor. On what basis did you make it?

A. No, I was told to assume that it was a crushing of that bone. Now, I don't know whether the crushing is light or moderate or severe. You didn't specify that.

Q. And that made no difference to your opinion?

A. I told you before in my answer that it wouldn't make any difference whether there was a crushing there or not. You could have the same symptoms due to an injury to the nerves without a crushing or without a fracture.

Q. Then the crushing, as a matter of fact, is an unimportant element in your diagnosis?

Mr. O'Neill: I object to that as argument.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: No, I didn't say that either. You may or may not have crushing, and you may or may not have the same result from the crushing.

[fol. 114] By Mr. Rockwood:

Q. The center of the first and second sacral segments is hollow, isn't it?

A. Yes.

Q. The center of the bone. It is not solid bone, is it?

A. No, there is some space there, there is a little hole, yes.

Q. There is a space?

A. Yes.

Q. Now, did you assume that that was crushed right into that space?

A. I didn't assume any degree of crushing. I just took the question as it was given to me, that there was a crushing of the bone.

Q. In other words, you expressed an opinion without knowing whether this bone was just cracked, crushed, or broken all to bits?

A. No, I didn't. I did not express an opinion on just that symptom alone.

Q. Then please tell the jury, Doctor, how much this bone was crushed in your own assumption?

A. I could come to my conclusion even if the bone was not crushed.

Q. Then I ask you, Doctor, assuming that the bone was not crushed, that element in the question was unimportant?

Mr. O'Neill: I object to that.

The Court: Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: What element?

By Mr. Rockwood:

Q. The crushing of the bone of the first and second [fol. 115] sacral segments?

A. I can't make any sense out of that question.

Q. Doctor, this hemorrhage that Mr. O'Neill spoke of, you said, I think, that that gave evidence of having cleared up by the improvement that was shown, didn't you?

Mr. O'Neill: I object to the form of that question. That is improper.

The Court: Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: No, I was answering the general question, that if a hemorrhage clears up, whatever the cause may have been, and if the paralysis improved, would it improve when the hemorrhage cleared up; and I said yes, but I wasn't referring to this particular case. That was just a general question. That holds good in any injury.

Q. And the fact that this man had improvement in 4 months would indicate to your mind, wouldn't it, that this hemorrhage had cleared up?

Mr. O'Neill: We object to that, first of all, already answered, and it is assuming that he did improve.

The Court: Objection overruled.
Mr. O'Neill: Exception.

The Witness: Well, assuming that the man had a hemorrhage.

[fol. 116] By Mr. Rockwood:

Q. Did you?

A. I was assuming the question about the fracture, and the rest of my answers was based upon my own observation. But you are assuming now here about a hemorrhage.

Q. You didn't assume that he had a hemorrhage?

A. I based my opinion upon my personal findings. I didn't say it was particularly due to the fracture or hemorrhage. If I remember rightly, my answer was that injury to a nerve may be caused by either a fracture or a hemorrhage.

By the Court:

Q. And if it was caused by a hemorrhage when the absorption process takes place and the pressure is removed that may show some improvement?

A. Exactly. In any case, not in this particular case.

By Mr. Rockwood:

Q. It may have in this case?

A. It may have in this case, assuming that the hemorrhage was there.

Q. You didn't mean to express the opinion that there had been any hemorrhage in this case, did you?

A. I didn't express an opinion directly of a hemorrhage. I said there was an injury to the nerves. I didn't say what the injury was caused by.

Redirect examination.

By Mr. O'Neill:

Q. Now, Doctor, perhaps, and I think you have told us before, but to get it finally in plain words; you have told [fol. 117] this jury any number of times that your testimony is based first of all upon the examinations that you made and the things that you yourself found and could see; is that right?

A. That is one thing, yes, sir.

Q. And then you were told that some other doctor in the hospital has taken X-rays and that he has testified that those X-rays showed a fracture of the spinous process of the 5th lumbar and a diffused crushing of the first two segments of the sacrum; is that correct?

A. Yes, sir.

Q. And you say that even if you had not evidence by X-ray you would be able to testify that the injury caused this present condition; is that right?

A. Yes, sir, that is what I said.

Q. But that the fracture which the other doctor found originally and this diffused crushing of the two segments of the sacrum was explanatory of the conditions which you found; is that right?

A. Yes, sir, that condition could produce the same symptoms that this man had.

Q. It is consistent with it and a competent cause of it, is it?

A. It is.

Dr. Ellis Moore Black, a witness for the plaintiff, being called and sworn, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. Now, Doctor, you are a physician and surgeon, practicing your profession in the City of New York?

A. Yes, sir.

Q. Will you please briefly state your professional educa-
[fol. 118] tion and experience?

A. I graduated from Harvard Medical School in 1920. I came to New York in charge of experimental medical research in the Cornell University Medical School. I was with them about three years, subsequently with the New York Post Graduate Medical School and Hospital, under the department of roentgenology. I have practiced my profession in New York City since 1920, at which time I received a license to practice, of course, before I began to practice.

Q. Did you have any specialty at all and experience in connection with the taking of X-ray pictures and films?

A. Yes, sir.

Q. State that experience and study.

A. I studied roentgenology at the New York Post Graduate with Dr. Myer, and in 1924 established an X-ray laboratory of my own in the Bronx, City of New York, and have so conducted it since that time.

Q. And you have had the general experience with reference to the nerves and nervous system that a physician and surgeon has, is that correct?

A. Yes, sir.

Q. And have you any in addition to that, such as being an examiner?

A. Well, I am mental examiner for the state department of mental hygiene.

Q. Now, about how many X-ray pictures do you take a year?

A. 4,000 to 5,000 every year.

Q. And did you at the request of my office make X-rays of this plaintiff's back?

A. I did, and of his chest, back and chest.

Q. Well, so far as the chest, as long as you have mentioned the chest you can disregard the chest, because the [fol. 119] one that we have had a check-up on they concede is of some other person and not this plaintiff, so that you may disregard that.

Mr. Rockwood: It is so conceded and agreed.

By Mr. O'Neill:

Q. Now, Doctor, these films that you have taken here, are they good X-ray films as showing the condition of this plaintiff's back?

A. They represent the condition of the plaintiff's back at the time they were taken.

Q. And when were they taken?

A. About the 15th of this month.

Q. Of September?

A. Of September, yes, sir.

Q. Now, how many did you take of those?

A. Eliminating the chest, we have 6.

Q. Now, will you put them in the shadowbox in order—I offer them in evidence.

By the Court:

Q. You took these yourself?
A. Yes, Your Honor.

By Mr. O'Neill:

Q. You have a laboratory of your own, is that right?
A. Yes, sir.
Q. Furthermore, Doctor, as long as that is gone into, and bearing on your experience, you have a private hospital of your own, have you not?
A. I have, sir.
Q. And how large is that hospital?
A. 74 beds, according to the regulations of the Department of Hospitals, City of New York.
[fol. 120] Q. Well, how many stories high is it, and about how wide?
A. Oh, it is 7 stories and a penthouse high, and about 50 x 100.
Q. And you had that built yourself?
A. Yes, sir.
Q. Now, take the first X-ray and tell us what view it is.

(X-ray film marked Plaintiff's Exhibit 10.)

A. This radiograph, labeled Plaintiff's Exhibit 10, represents a ventro dorsal view of the pelvis of Mr. Bezue.
Q. That means a front and back view, doesn't it?
A. It represents a target in front of the patient, the patient receiving the ray in front, it penetrating his body and passing out in the back.
Q. Now, when you took that picture the man was lying with his back to the plate and the ray went through his abdomen?
A. Goes through in this direction (indicating).

By Mr. Rockwood:

Q. In other words, we are looking from the front back, as we look at this picture?
A. Yes.

By the Court:

Q. Well, does it show the back or the front of the spinal column?

A. The part of the body closest to the film will be most accurately filmed, and therefore this will be most accurate for those parts most dorsal, most near the dorsal surface of the body.

[fol. 121] Q. In other words, if the flesh were all stripped away you would be looking at the bones from the back?

A. You would see the back clearly and in proper size. Those parts in front, since the ray comes from a point and diverges, would all be distorted. That part which would be essentially placed in the middle of the back would be accurate as a photograph is relatively accurate—the rest is distorted.

By Mr. O'Neill:

Q. Now, what does that show, this X-ray taken September 15th, last month?

A. It shows a hazy mass in the region of the first two segments of the sacrum. It shows an obliteration of the joint between the ascending pedicle from the sacrum to the descending one from the 5th lumbar—the result of healing in that location.

Q. Healing of what?

A. Healing of the bony trauma as a source of pathology.

Q. By trauma you mean violence?

A. Yes, violent injury.

Q. Doctor, I will show you films in evidence taken from the envelope, Exhibit 1, which were taken of this same man on September 2nd, 1929. That is the day he was injured. Now, bear in mind it is a picture of the same man.

A. (Placing film in shadowbox.) There is no label right or left on this film. Can we just identify these in some way?

Q. Well, I know they are the ones you were using, and they come from an envelope marked Plaintiff's Exhibit 1, and they are marked "Horton Memorial Hospital," and they are said to have been taken on September 2nd. This [fol. 122] one marked Plaintiff's Exhibit 1-a is supposed to have been taken on 9-2-29, "Clarence Bezue, pelvis and lumbar spine. Admission 8:42. Radiograph of the pelvis." Assuming that the doctor who treated the man stated that

in connection with this X-ray report and his own examination he came to the diagnosis that this man had a transverse fracture of the base of the spinous process of the 5th lumbar, and apparently some diffused crushing of the posterior aspect of the first two sacral segments, there being hazy patches of compact cortex scattered in this area. Now, keep that assumption in mind and use that to verify that you are looking at the right X-ray.

A. Well, you have 4 radiographs of the lumbar and sacral regions, being Plaintiff's Exhibits 1-a, 1-b, 1-c and 1-d.

Q. Now, which one have you got in the shadowbox?

A. Plaintiff's Exhibit 1-a, which is a radiograph taken also ventro-dorsally of the lower lumbar spine and pelvis, numbered 0475, "E. A. Horton Memorial Hospital."

Q. Now, what does it show?

A. It shows a diffused area of abnormality over the first and second sacral segments, whereby at places the density of lime salts, represented by the whiteness of these irregular shadows, is increased. At other places it is decreased; the increased density being due to the fact that numbers of fragments of the calcium material in the bone are firmly together, in other places they are absent, and others relative rarefaction of that region. It does show the presence of both the articulations of which I spoke in my own radiograph, both are present in this one. It shows a linear marking across the region of the body of the 5th lumbar.

[fol. 123] Q. Well, what injury does it show to those bones and tissues?

A. I ought to say, Mr. O'Neill, before I answer your question, that it does show a congenital failure of fusion of the spinous process portion of the lower sacral segments, 5th and 4th; a finding also confirmed in my radiograph, which tends to convince me that my radiograph and this radiograph are made of the same individual.

By the Court:

Q. What do you mean by the word congenital?

A. It is a failure of development in inter-uterine life.

By Mr. O'Neill:

Q. Well, that is down where?

A. That is down in the 4th and 5th sacral segments, and

as far as the individual is concerned has no importance in reference to his ability to carry on his occupation,

By the Court:

Q. Or to any fracture or injury?
A. No.
Q. Congenital refers to birth, doesn't it?
A. Yes.
Q. It was there at his birth?
A. It was there at his birth.
Q. And that serves to——
A. (Interrupting) It just convinces me that these two films are of the same individual.

By Mr. O'Neill:

Q. It has nothing to do with the injury?
A. No.

[fol. 124] By Mr. Rockwood:

Q. In other words, it is not an injury, is it?
A. It has nothing whatever to do with the injury.

By Mr. O'Neill:

Q. Outside of your finding out that they were the same?
A. Yes.
Q. It is admitted here that they were the same. Now, tell us about what injury it shows.
A. There is without question a comminution with condensation and rarefaction in areas over the first and second sacral segments.
Q. And this comminution means what?
A. Breaking up into smaller particles.
Q. That is, breaking up into smaller particles is what we call many fractures?
A. Many small bits.
Q. Go ahead.
A. The linear marking across the 5th lumbar vertebra would be taken to represent fracture, from its linear type. I do not, however, want you to get the impression that I said through the body. The lateral view would be necessary to determine whether it is through the body or the spinous process, because the ray passes both through the body and

through the spinous process and the one is laid on top of the other in this view.

Q. Well, it indicates then a fracture of the 5th lumbar and these comminuted fractures of the first two segments of the sacrum. Is that right?

A. Yes.

Q. Now, have you got any other X-rays of that?

A. This radiograph labeled Plaintiff's Exhibit 1-b represents a lateral view of the trunk (placing X-ray film in shadowbox).

[fol. 125] By the Court:

Q. Side view?

A. It is taken from side to side. It is not labeled so that we have to conjecture as to whether the left side or the right side is down, and the ray might have passed in either direction. It is so taken that an exact lateral view is not obtained here. The crest of one ilium is not superimposed upon the crest of the other.

By Mr. O'Neill:

Q. Tell the jury where the sacrum is.

A. The sacrum is at the base of my spine, under my hand (indicating).

Q. And is the sacrum the big wedged bone at the bottom of the spine against which the winged hip bones fit?

A. Yes, sir.

Q. And the sacrum is the final bone at the base of the spine upon which all the weight of the trunk of the body rests; is that right?

A. Yes, sir.

Q. All right. Like the key-stone.

A. So that this radiograph represents a slightly oblique view through the abdomen, but more lateral than in any other direction. It shows the bodies of the lumbar vertebrae, 5th, 4th, 3rd and 2nd. We don't like to look at the periphery—we call that the first up there (indicating on X-ray). It show the superior surface articulatory of the sacrum and its ventral and dorsal surfaces, ventral being toward the front part of the body and dorsal toward the rear. It doesn't show a linear marking through the body of the 5th lumbar. It cannot be logical or fair roentgenology to assume that there is a fracture in the body. The

spinous process is not well demarked, and due to the ilium [fol. 126] overlying it it is impossible to see the details of the spinous process.

Q. Does this X-ray indicate that there isn't a fracture, or merely negative as to whether there is any through the body?

A. It is negative as to a fracture through the body.

Q. I say, it is just negative?

A. Just negative.

By the Court:

Q. And you can't tell one way or the other as to the spinous process.

A. Not with certainty, Your Honor.

By Mr. O'Neill:

Q. That is, you can't tell as to it being through the body?

A. I don't see any definite evidence of it through the body, however, this bone is not in contact with the film in a lateral view. It is midway between the two iliae, therefore approximately midway in the substance of the body, quite removed from the film, therefore subject to distortion and lack of clearness of its borders and margins. It is not possible to see a fracture line through there in this radiograph.

Q. Now, have you looked at all these others? I mean, I don't want to take up so much time with them. Do they add anything to what you have seen in these other two exhibits?

A. Radiograph 0475, Plaintiff's Exhibit 1-c, is taken ventro-dorsally of the trunk, with special reference to the lumbar region. It is taken higher than the original one of the pelvis, so that the central beam is to be made out near the center of the film.

Q. What else does it show? Does it show anything in [fol. 127] addition?

A. I see nothing in addition, except considerable gas distending the coils of the large intestines.

Q. No; no; I mean the bones.

A. Nothing at all that I can see additionally.

Q. What does the other one show?

A. Plaintiff's Exhibit 1-d—there is just a portion of "F. A. Horton" I believe on it.

Q. Does it show anything different about the bones?

By the Court:

Q. In other words, does it throw any further enlightenment on the situation than what we have already had?

A. No, your Honor.

By Mr. O'Neill:

Q. All right. Now, here is one taken 9-25-29, from Exhibit 2.

A. Plaintiff's Exhibit 2-a, "E. A. Horton Hospital" in the corner. "No. 552" in ink on the upper margin of the film. That is also taken ventro-dorsally of the pelvis, the sacrum being just above the center of the film. It is again a radiograph of Mr. Bezue, and it shows the areas of condensation and rarefaction over the upper sacral segments. The linear mark across the 5th lumbar body is not so well demarked.

Q. But it shows the same linear marking of the original fracture and also these comminutions or density to some extent, is that correct?

Mr. Rockwood: Objected to as leading.

The Court: Overruled.

Mr. Rockwood: Exception.

The Witness: A. Yes, sir.

[fol. 128] By Mr. O'Neill:

Q. What is the other one?

A. That is Exhibit 2-b, numbered 552 in ink on the upper margin of the film, also taken of the same region.

By the Court:

Q. Does it show anything in addition to 2-a?

A. No, Your Honor.

By Mr. O'Neill:

Q. Now, you gave your reading of your own, did you?

A. I did read one of them, Mr. O'Neill.

Q. Well, do any of the others show anything in addition to the one you have read, anything further, I mean?

A. There is nothing particularly further that I can demonstrate from this one.

Q. Is there any other X-ray that you think ought to be presented in order to fully set forth the condition?

A. The lateral view only is necessary in my opinion to complete what I would have to present radiographically of Mr. Bezue.

Q. Have you got that there?

A. Yes. (Producing X-ray film.)

Q. Was that taken by you?

A. Yes.

Mr. O'Neill: I offer it in evidence.

(Received in evidence and marked Plaintiff's Exhibit 11.)

The Witness: This radiograph, labeled Plaintiff's Exhibit 1, taken 9-15-30, left flank of the film ray passed through the right flank, through the spine, through the left [fol. 129] flank. It shows the anatomy of the 2nd, 3rd, 4th and 5th lumbar, of the sacrum, with considerable hazy increased dense mass over the upper portion of the sacrum, particularly the region of the first and second sacral segments.

By Mr. O'Neill:

Q. Now, that, particularly in conjunction with the other X-rays in evidence about which you have testified, indicates what?

A. That a rare homeogeneous calcific deposit has occurred in the region of the comminution and compression in the upper dorsal aspects of the bodies of the first and second portions of the sacrum.

Q. In other words, that is a result of the original many fractures in the first and second segments of the sacrum; is that right?

Mr. Rockwood: That is objected to, if Your Honr please.

By the Court:

Q. Will you state what you mean in the ordinary layman's language?

A. This means that in the original radiograph many little tiny areas of bone were either driven together or driven apart. The pathological result of that is that the bone marrow is torn one section from another, allowing free bleeding from the vesels within that marrow, forming a clot containing these little spicules of bone, some driven together, some separated. The process of healing results in this clot being invaded by blood vessels, interstitial cells, with the destruction of the clot. It has fibre [fol. 130] and fibre cells. It has red cells, and it has white cells, and fibrous tissue in which there is more or less deposit of lime salts, and so on.

Q. The lime salts makes the bone, does it?

A. Ultimately leading to new bone. This is simply the result of the fracture and the healing processes about it, leading toward an ultimate production of new bone at this region.

Q. And that shows it in the process of reconstruction?

A. Yes, sir.

Q. And that would be the natural result of time and nature on the conditions shown in the early photograph?

A. It would, sir.

By Mr. O'Neill:

Q. So in this original condition, from these various X-rays, what is your diagnosis as to what was the injury to the bone?

A. I am of the positive opinion that he had a bony injury to the 5th lumbar vertebra. I am constrained to believe that that is in the spinous process and in the ascending pedicle from the sacrum and the descending from the lumbar, although there was bony damage both around that joint, in the joint and in the spinous process of the 5th lumbar.

Q. That is your opinion with reasonable certainty, based upon the X-ray in evidence?

A. Yes, sir. I think there was further bony injury in the region of the dorsal segments of the first and second segments of the sacrum, with small areas driven together, others driven apart, with the formation of a clot in this region and now with considerable calcification and evidence of progress towards ultimate bone production.

Q. Now, in addition to these X-rays you have made a [fol. 131] physical examination of this plaintiff, haven't you?

A. I did, sir.

Q. You made more than one physical examination, I suppose. How many times did you have this man up before you, or when did you make your examinations?

A. I saw him on the 15th of September, at which time I inquired his story of what happened to him.

Q. Well, you can't go into that because that is his statement. But assuming that on that particular day he fell while working and was injured and was taken to the hospital——

The Court: Not on that day.

By Mr. O'Neill:

Q. On the date stated by him, on September 2nd, 1929, that he was injured, then go on and state what you found out when you saw him.

A. I found first marked hyperæsthesia.

By the Court:

Q. Tell us what that means?

A. Increased sensitiveness to touch and pain, over the dorsal para-spinal muscles——

Q. What does para-spinal mean, over the spine?

A. And beside it—extending from the 9th dorsal downward and increasing as it progressed down through the lumbar region to the sacrum. There was marked prominence and spasm of the para-spinal muscles on the right side of the spinal column.

By Mr. O'Neill:

Q. And spasm?

A. And spasm as compared to the left.

[fol. 132] Q. And injury would cause a spasm and the prominence, would it not?

Mr. Rockwood: That is objected to as leading.

The Court: I will have to sustain the objection.

By Mr. O'Neill:

Q. Would or would not spasm of the muscle cause prominence?

A. Spasm would cause prominence.

Q. Yes, and injury would cause both, be a competent producing cause of both?

A. An injury is a competent cause.

By Mr. Rockwood:

Q. Competent cause of what, Doctor?

A. Of spasm, and that would produce the prominence of the muscle.

By Mr. O'Neill:

Q. When you have a spasm you have prominence, as a rule, is that right?

A. Yes.

By the Court:

Q. What do you mean by prominence, bulging out?

A. Standing up.

Q. Yes, bulging out?

A. Yes, sir. There was a rounded mass over the lower coccyx discharging pus on pressure from a small opening or stoma. There was loss of control of his extremity to a very considerable degree.

[fol. 133] By the Court:

Q. What extremity?

A. Right leg and foot, Your Honor.

By Mr. O'Neill:

Q. Well, what was the defect there in the right leg and foot as you observed it?

A. The defects were neurological in type, nerve malfunction.

By the Court:

Q. That is, failure of the nerve to properly function?

A. Failure of the function of those nerves.

By Mr. O'Neill:

Q. Well, what did you observe about it?

A. I observed that he failed to elevate his foot, to walk properly, that he had to swing it into position in order to place that foot in a position to bear his weight and take the next step.

By the Court:

Q. When you say elevate the foot do you mean lift the toes?

A. He was unable to properly elevate his toes to swing it into position, Your Honor.

By Mr. O'Neill:

Q. You took the cast off him, did you?

A. Yes, sir.

Q. And did you observe what effect that had on him?

A. I observed that when the cast was removed he lost [fol. 134] much of his ability to handle his trunk.

Q. Trunk of his body?

A. Trunk of his body. He had difficulty getting into position on the X-ray table so that the films could be exposed.

Q. The trunk, I suppose you mean from the hips up?

A. From the hips up.

Q. That is what you mean by the trunk of the body?

A. Yes, sir.

Q. And in your opinion with reasonable certainty is it necessary for him to wear this brace which was prescribed, or two of them were prescribed for him, by the attending surgeon in the hospital, one of which he wears for a couple of days and then takes it off and uses this in the meantime —that distributes and holds the weight, doesn't it?

A. Yes, sir.

Q. In your opinion with reasonable certainty is that a necessary and proper brace for him to wear?

A. I believe so. It definitely permits him to better convey himself about and perform such things as he is able to perform.

Mr. O'Neill: May we have the record show this brace is 14 inches long?

The Court: The record may show that the brace is 14 inches long.

Mr. O'Neill: About 14 inches long, that is perpendicularly.

The Court: Of course, it is big enough to go around his body?

Mr. O'Neill: Yes, it is big enough.

Q. And it is a heavy brace, isn't it?

A. A rather heavy brace, yes, sir.

[fol. 135] By the Court:

Q. How much would it weigh?

A. Well, I would say around 14 to 16 pounds. I am not so good at guessing weights, Your Honor.

By Mr. O'Neill:

Q. What stuff is this made of?

A. Well, it is made of plaster paris bandage over a flannel innerlining, of course with a lace attachment in front so that he can take it off and put it on.

Q. And apparently on metal ribs with——

A. —with supports.

Q. With leather parts in which the lacing eyelets are found perpendicularly; is that right?

A. Yes, sir, that is correct.

Q. Now, when that is off did you notice what effect it has on him as to his being compelled to hold onto something to stand up?

Mr. Rockwood: That is objected to as leading.

Mr. O'Neill: Withdrawn.

Q. Tell us what you observed about it when it was taken off. Go into detail.

A. I had this chap, Clarence Bezue, standing in my X-ray room adjacent to my X-ray table. I asked him to take off his support, which he did, and he lost his balance to the extent of having to catch himself to prevent himself falling. As he was lowering the cast he held himself in position with his cane in one hand and held onto the table with the other. I intentionally did not help him because I

wanted to see what he could do. I asked him to get up on [fol. 136] the table so we could take the radiograph, and I watched his efforts at getting onto the table. He had a great deal of difficulty trying to.

Mr. Rockwood: I move to strike out his conclusion unless the doctor states what he did.

The Court: Motion denied.

Mr. Rockwood: Exception.

By the Court:

Q. Go ahead, Doctor.

A. Trying to push his hips, the gluteal region, over the edge of the table so that he could get enough of his body weight resting upon the surface of the table to turn and lie down.

Q. That is, he was trying to get his weight to balance?

A. So he could tip himself upwards, using the pelvis as the center of his fulcrum.

Q. Doctor, would that be the natural result of the injury you describe?

A. In my opinion it might well be, sir.

By Mr. O'Neill:

Q. In your opinion with reasonable certainty would the injury that you have seen in these X-rays, including the first X-rays and yours, be a competent producing cause of the condition that you have now described as having yourself seen in the man?

A. Yes.

Q. Go ahead now. Tell us what else you determined from your physical examination and your findings.

A. It was possible for him to tilt himself backward onto the table, into a position which was not ventro-dorsal. [fol. 137] It was always oblique. The right hip or the right gluteal region, the region just above the hip posterior, never approximated itself on the table at the same time the left one did. I explained to him that I must have him in the position with both hips down so that I could get a proper view through the abdomen, and in his efforts to get over he would wince and jerk, and if he got far enough around on the right gluteous so that he could hold that position his left one would be clear up off the table. In order to get a

ventro-dorsal view of the sacrum I had to ask him to double up his two fists and put one to the right and the other to the left gluteous, about as I have placed my fists there (indicating), so as to hold the weight of his body from the film on which he was lying.

Q. What did that indicate to you?

A. It indicated to me definite pain on such pressure as the weight of his body produces when one-half rests on the left gluteal region and the other half on the right, and begins to press upon the table or the bed upon which he lies.

Q. What is the gluteal region?

A. The prominence of the buttocks, right and left, is the right and left gluteous.

Q. Now, in your opinion with reasonable certainty is the condition that you describe this man being in permanent and to the extent you testified?

A. The condition is quite permanent. It has been present, according to these radiographs, since September, 1929. It is definitely present and prominently so in September, 1930, more than a year after the accident occurred, with such considerable loss of function, with loss of motor power [fol. 138] and control, with such considerable disability, as to be in my opinion a quite permanent injury.

Q. Now, in your opinion with reasonable certainty will this man, who worked in the roundhouse, doing all kinds of work, in view of this injury and the fact that it has lasted so long and is in its present condition—in your opinion will he ever be able again to do laboring work where he will require the use of his back and this affected leg?

A. I don't believe he will, sir.

Q. And in your opinion with reasonable certainty will he permanently, because of these conditions, have to wear a brace of a similar character—I don't mean just this one, because that will be worn out—but a brace of a similar character to take the weight off the trunk of the body and transmit it to the hips, keep it off the spine?

A. I think, sir, he will. I think he will need a support.

Cross-examination.

By Mr. Rockwood:

Q. Doctor, you generally testify for Mr. O'Neill, don't you, as an X-ray expert?

A. I have testified for him a few times.

Q. A great many times, haven't you?

A. Not a great many, no, sir; several times. The exact number I couldn't tell you, but I have on several occasions.

Q. You do quite a little bit of court work, don't you?

A. Why, I shouldn't think so; no, sir.

Q. And you take 4,000 or 5,000 X-rays a year?

A. Yes, sir.

Q. And you take them yourself?

A. My technicians sometimes take them. I took these myself.

[fol. 139] Q. You said before you took them?

A. I took these; yes, sir.

Q. You said before you took 4,000 or 5,000 X-rays yourself a year.

A. Well, my laboratory takes them. If that is an error, I apologize to you.

Q. You are an X-ray expert, aren't you?

A. Well, I have worked at it. I trust that you are not flattering me.

Q. I am asking you a question.

By the Court:

Q. The answer is you claim to be.

A. I claim to be, Your Honor.

By Mr. Rockwood:

Q. And that is your job, that is your work, isn't it?

A. It is one of my jobs, yes, sir.

Q. And the biggest proportion of your work has to do with X-ray work, doesn't it?

A. Well, I won't quite agree to that—it isn't the biggest proportion of my income.

Q. You make a distinction there, Doctor, between your income and your work?

A. No, no, I am not going to distinguish particularly, but I say based upon my income it is not the thing of prime importance.

Q. Do you do any surgery?

A. Sometimes; yes, sir.

Q. General practice, medicine?

A. We treat every manner of case in our sanitarium that comes along.

Q. I didn't ask you what "We" did, I asked you what you did.

A. All right, I do it.

[fol. 140] Q. And have a general practice?

A. Yes, sir.

Q. Surgery?

A. Yes, sir.

Q. And specialize in X-ray work, and do 4,000 or 5,000 films a year; is that right?

A. I do 4,000 or 5,000 films a year.

Q. Have you ever been connected with a hospital except in an X-ray capacity other than your own?

A. With the Post Graduate when I was there.

Q. When was that? As an interne?

A. No, sir.

Q. When was that?

A. That was back in about 1923.

Q. Let's see; when was it you graduated, 1920?

A. Yes, sir.

Q. And you served as an interne after 1920 for how long?

A. No, sir; it was the year 1918-19, during the World War, that I spent in Boston City Hospital. We didn't have any internes. Senior students in the medical school were the internes at that time.

Q. Isn't it a fact, Doctor, that since 1923 when you left the Post Graduate that you have been almost exclusively specializing in X-ray work?

A. No, sir. I have done X-ray work ever since that time, about 1924, when I left the Post Graduate, but I have done other work in medical lines and shall continue to do the same.

Q. If isn't the fact that you have continuously specialized in X-ray work?

A. I have continuously X-rayed patients and reported to physicians and occasionally reported to attorneys my findings, and when I have been called to court I have come and testified as I saw the findings to be, ever since that time.

[fol. 141] Q. I made no intimation that you didn't testify as you saw the findings. I simply asked you whether you didn't specialize in X-ray work, and haven't ever since 1923.

A. If that constitutes specialization, I have, and if it doesn't, I have not. Those are the facts.

Q. Don't make any specialty of neurology, do you?

A. Never, unless you want to say that having been appointed medical examiner for the State Department of Mental Hygiene and having treated mental and neurological cases constitutes some little knowledge of the subject.

Q. Well, now, Doctor, being a qualified examiner of the State hygiene law for the purpose of passing on questions of sanity is not a very heavy practice in neurology, is it?

Mr. O'Neill: We object to that question.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: If you permit the answer—I think it is a rather serious and rather weighty matter to determine one's sanity, and an adequate knowledge of neurology and psychiatry ought to be possessed by one so qualifying.

Q. And that subject, neurology, has to do with the cure and treatment of nerve injuries too, hasn't it, Doctor?

A. Yes, sir.

Q. And have you ever made a speciality of the care and treatment of nerve injuries?

A. Yes and no, just as I have explained the facts.

Q. That is the best answer you can make, sir, yes and no?

A. I don't wish to pretend to claim high specialization in [fol. 142] that line. I have told you the truth.

Q. Which is that you do not specialize in neurology?

A. I didn't tell you that, sir.

Q. But isn't that the truth?

A. I told you that I have treated those cases, and under the conditions that I have specified.

Q. Now, when you testified here today as to the quite permanency of this man's condition and necessity for him to wear this brace, and whether or not he will be able to work, are you testifying as an X-ray expert or a surgeon or as a neurologist?

Mr. O'Neill: Objected to as immaterial and irrelevant. First of all, different parts of it involves one science and character of knowledge.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: I testified as my best knowledge and belief, based upon my education and experience, such as I

have tried to tell you, which tells me to be the truth, the whole truth, and nothing but the truth.

By Mr. Rockwood:

Q. That is your answer, is it, Doctor?

A. Yes, sir.

Q. Do you know when the X-rays were taken at the Middletown Hospital, Plaintiff's Exhibits 1-a, b, c and d, and 2-a and 2-b, whether this man was strapped up?

A. Did I understand you to say Middlestown Hospital? I thought this was Horton Memorial Hospital.

[fol. 143] Q. Well, that is at Middletown.

A. I see. Was he strapped up at the time?

Q. He had clothes on, didn't he?

A. I saw a button on one of them, which might be indicative of clothes. I do not see linear markings that might be indicative of the thicker and thinner areas of adhesive strapping.

Q. You don't know whether he was strapped or not, though, do you?

A. Let me go back and look those radiographs over if it is a matter of real importance.

Mr. O'Neill: It is perfectly immaterial and their expert won't claim it is material.

The Court: If it is objected to, the objection is overruled. He may ask him.

Mr. O'Neill: Look at them and take as long as you want.

(Witness examines Plaintiff's Exhibit 1-C and places same in shadowbox.)

A. There is a button seen at the region of the second and third lumbar articulation.

By Mr. Rockwood:

Q. A button seen?

A. The shadow of a button is seen at the region of the second and third lumbar articulation in this film. One is also seen over the upper portion of the sacrum. This film is unlabeled, right or left, but from the shadows of the contents of the large intestine, this representing the shadow usually seen of a secum, this secum normally anatomically being on the right side of the abdomen—oc-

[fol. 144] casionally it is transposed. It would be fair to assume that this is the right side of the patient (indicating). These buttons then are approximately in a position to the left side of the second and third lumbar articulation and over the sacrum. The entire radiograph show a number of linear markings with some increase in the density over the region of the right iliac crest, as though a strip of adhesive had been placed across the upper right side of the pelvis dorsally.

CLARENCE BEZUE, the plaintiff, being called and sworn as a witness in his own behalf, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. Mr. Bezue, you are the plaintiff in this case, the man who is bringing this suit? Is that right?

A. Yes, sir.

Q. And how old are you?

A. Thirty-two.

Q. And on this date, September 2nd, 1929, were you in the employ of the defendant, the New Haven Railroad Company?

A. Yes, sir.

Q. And you had been such for how long, how many years?

A. Nearly one year.

Q. And what wages were you earning at the time of the accident?

A. Twenty-one something a week. I am not sure just what the change was.

Q. You aren't sure?

A. About the change. It was twenty-one dollars and some cents.

Q. And for that you worked how many days a week?

A. Six.

Q. Now, you lived at this time at Walden?

A. At Walden.

[fol. 145] Q. You were born in Connecticut?

A. No, sir, I was born in Walden.

Q. You were born in Walden?

A. Yes.

Q. Now, during that whole year that you worked for the company did you work at a roundhouse, or had you some previous job?

A. No, I worked before out around the tracks there and by the pit, and partly in the roundhouse, as an engine wiper when I started with the company.

Q. In the roundhouse you worked as——?

A. Well, we had to do those engines, the outgoing engines, and if they were outside we did them outside. If we got them before they were brought out we did them inside.

Q. And about how many engines came in there every day at that time?

A. Oh, probably ten—I am not sure of the exact number.

Q. That is ten—about the same came in every day?

A. About that; yes, sir.

Q. And the same ones would go out every day; is that right?

A. Yes, sir.

Q. And what was done with them in the roundhouse or about the roundhouse, at that place?

A. Well, just such work as might be reported on them as they came in off the road. Probably a valve leaking, or some other little repair work that might need to be done on them. It was listed up by the inspectors, and when that work was done the engine went away on its regular run.

Q. Did they come in for oiling, too?

A. Yes, sir.

Q. And about how many of them were oiled there every day?

A. Well, that I really don't know.

Q. About—your best judgment?

A. All of them that were going out were oiled, but I [fol. 146] really don't know just what number it might have been.

Q. I mean, of course, even if more work was done on an engine, it is also oiled. But I mean how many of them came in there to be oiled, just oiled, or a very small amount of work to be done on them, where they would come in and go out the same day?

A. Oh, probably—some days there would be more than others. Some days there would be maybe six of them, and some days maybe eight or ten. Our work was of such a nature that we really had no engines assigned to us or no jobs assigned to us. We were just around there and they grabbed us wherever they wanted us; whatever work they might have for us at that time we were called to do.

Q. Anything around the roundhouse?

A. As far as helping around those engines was concerned with the truck, lifting the castings and bringing material to the engines.

Q. And oiling them?

A. And pulling down the grease boxes, going to the storeroom, bringing grease for them, we would put them in and jack them up again.

Q. That was the work you men were doing there?

A. That was the work that we did with the truck. Whenever these men that were working on the engines needed a truck they just called for us wherever we might be, come for us and take us up there to do the work with the truck.

Q. And that was done generally, as you say, on not only locomotives that were in for two or three days or more, but also locomotives that would only be in for a few hours and then go out again; is that right?

A. Absolutely, any of them. We worked on them all.

[fol. 147] Q. And is that the kind of work you were doing every day?

A. Every day.

Q. Up to and including the day of the accident?

A. Up to and including the day of the accident. We had no special work laid out for us. We were just at the disposal of those men, whichever one might need us called us there.

Q. Now, take, for instance, on adjusting a coupler?

A. We did plenty of that work.

Q. When a locomotive would be in just for a few hours and go out again on its work did you do that frequently?

A. Yes, sir.

Q. And how would you do that?

A. By getting the truck down to the back end, or the front end, wherever it might be, putting a chain around the draw-bar, holding it up so they could put a plate in it or

put a plate under it, shimmy it up, whatever the work might be that they were doing on it.

Q. Then if you were called over to do work without the truck you did that too, did you?

A. We most always worked with the truck.

Q. I know, but if you were called over to do anything without your truck you did that too?

A. If whatever we were doing was so that we could handle it ourselves with our hands we did it. The heavier work we would get our truck out.

Q. Now, for instance, suppose locomotives were in there for adjustment or repairs, taking about two hours altogether before going out on the road, such as fixing brake shoes or pressure tanks. Would you do that too?

A. Yes, sir.

Q. That was all in your regular work?

A. All in our regular work.

Q. Day in and day out, and had been up to the time of [fol. 148] the accident, is that right?

A. Yes, sir.

Q. Did you also with the aid of your truck take drive shafts off hot locomotives and fix them up, then put them back and have them go out again right away?

A. We would take them off the locomotive, take them in to the machine shop with instructions to wait there for them and bring them out and put them back on the engine right away.

Q. And have the locomotive go off on its work?

A. Then it was all ready to go out and went out at its designated time.

Q. Within a few hours?

A. Within a few hours.

Q. After it come in?

A. Yes.

Q. And the same with reference to fixing brake shoes, and things of that kind?

A. Yes, sir; we did that as well.

Q. You did everything that you were told to keep these locomotives continuously in service?

A. Yes, sir.

Q. That was the work you were doing?

A. That was the work—that was our work, what our job called for to do.

Q. Day after day and right up to the time of the accident?

A. Yes, sir.

Q. Of course, you knew these crews, knew these locomotives, did you not; knew the men, where they worked to and from?

A. Some of them.

Q. Those locomotives, most of them, were regular locomotives, weren't they, in there and out?

A. Yes, sir; most of them had a designated run.

Q. Do you know what work they did? Just give us a list of, not all of them, but as far as you knew what work they did.

A. What do you mean, what work they did?

[fol. 149] Q. Where their run was and what kind of a locomotive it was.

A. Some of them would go to New Haven.

Q. What, pulling freight?

A. Some to New Haven, and some to Hartford, Danbury.

Q. From Maybrook, New York?

A. Yes, sir.

Q. That was your daily work, day after day, keeping these locomotives in service which were engaged in running from Maybrook to New Haven and Danbury, Connecticut, is that right?

Mr. Brumley: I object to that question as leading, and I object to the form of it because it calls for a conclusion, "in service."

The Court: Well, of course, I will have to sustain the objection.

Mr. O'Neill: Well, I strike out the words "in service"—that they were running. I thought there was no dispute about these facts.

Mr. Brumley: Well, there is a dispute about the use of the words "in service."

Mr. O'Neill: All right. I will withdraw the words "in service."

By Mr. O'Neill:

Q. (Continuing:) Keeping these locomotives in good repair and maintenance which ran from these points and Hartford, Connecticut; is that correct?

A. Yes, sir.

Q. Do you know whether or not, as has been stated and admitted here, that the company maintained at Readville, [fol. 150] Massachusetts, a place for overhauling and repairing locomotives out of service?

A. I have heard plenty of talk about it.

Q. You only know it by hearsay?

Mr. Brumley: Well, it is admitted that we had a shop at Readville.

The Court: And Readville is in Massachusetts?

Mr. Brumley: Yes, sir.

Mr. O'Neill: Well, they have also made an admission in the course of their opening, which was taken down.

The Court: All right.

Mr. Rockwood: You mean the admission as to the Readville shop, Mr. O'Neill?

Mr. O'Neill: Yes.

Mr. Rockwood: No dispute about that.

By Mr. O'Neill:

Q. Now, you were injured about what time in the day?

A. Somewhere near 11:30 A. M.

Q. And what time did you go out that day?

A. At eight o'clock.

Q. You went on duty at eight o'clock?

A. Yes, sir.

Q. This day was a holiday, Labor Day, but of course on the railroad you men were working?

A. Yes, sir.

Q. And what kind of a motor car was this you had? Tell us a little something more about it?

A. Well, it was an electric crane with a platform on the front of it, and we would pick castings up, or whatever the objects might be that we were moving up with that crane, draw them up with the cable and then swing them [fol. 151] over on the platform, let them down, and then convey them out to the engines or wherever we might be taking them.

Q. Well, what did you do about these hot locomotives or locomotives that were in there for a couple of hours? What would you do at different times about lifting things on them, brakes and shafts, and fixing different things?

A. Why, different jobs were done on them that way. There would be jobs maybe of pulling up a spring so they could block them up.

Q. And do what, oil it?

A. The springs.

Q. What else, oil what?

A. And pull down what they call the grease cellars; put a big bar through, and we would put the chain on and pull that up to pry that box loose so it would drop down. They could see the journal under there. Then they would put another block of grease in there and jack it up again in position. Or we might have to fix a draw-bar on it, hold a draw-bar up while it was tightened up or shimmied up. Or sometimes change a pump on them, or if there was something else loose under the pump, take the pump off so they could work underneath it, and put it back again in position. Or change the pilots—such work as that.

Q. Those were all small jobs?

A. Those were all small jobs.

Q. Taking just a few hours so that the locomotive could go back and continue on its job?

A. It really didn't take us a few hours; sometimes half an hour, sometimes 20 minutes, sometimes an hour.

Q. Then when you would be through the locomotive would continue out on its business?

[fol. 152] Mr. Brumley: I object to this. In the first place, it is leading.

The Court: Objection sustained.

By Mr. O'Neill:

Q. Well, the locomotive would go out?

A. The engine was all ready to go out; yes, sir, at the designated time.

Q. Go out on the line?

A. Yes, sir.

Q. Now, then, this morning at what time did you start to have anything to do with these wheels in connection with which you were injured?

A. Well, I don't just remember exactly what time it might have been, but I do recall it was quite early in the morning.

Q. Well, what did you do?

A. Well, we were called up to the shop where those wheels were and we started getting them out, wrapping a bag around them—no, I don't believe we covered those. There was a habit of covering them sometimes. Those were not covered—I am sure they weren't. We rolled them out of there, had to go a long distance up the track to cross over a switch so they could come back down on the main line leading down to the turntable, and they were placed on the table.

Q. What were?

A. Those wheels, drive wheels.

Q. How did you get them up there?

A. Rolled them.

Q. What locomotive did those come off, what number? Do you know?

A. 3221, I believe.

Q. And I think it has been stated here it had five pair of drive wheels?

A. Five pair of drive wheels.

[fol. 153] Q. Five pairs of drivers on it; is that right?

A. Yes, sir.

Q. And this one pair was the only pair off?

A. That was the only pair that was out of it.

Q. They were taken up the line to where, what place?

A. Well, they call it the back shop.

Q. What did they do there with it?

A. Put it in a lathe and turn down the journal on it, I believe, or something.

Q. Well, you didn't do it yourself?

A. I had nothing to do with that. That work was all done, had all been done by some of the other men before.

Q. I am talking about this morning. What was done this morning?

A. That work had all been done. Those wheels were ready to come back.

Q. Well, none of that was done this morning then?

A. No.

Q. Then you didn't testify——

A. I don't know anything about that work at all.

Mr. O'Neill: I move to strike it out—he didn't know what was done.

Mr. Brumley: I object to it going out.
The Witness: That work had been done before.
Mr. O'Neill: I move to strike it out then.
Mr. Brumley: I object to its going out.
The Court: I will let it stay in, but it is hearsay.

By the Court:

Q. What did you have to do with it this day?
A. Just rolled them down, that is all I had to do with that engine at all.

[fol. 154] By Mr. O'Neill:

Q. And how did you roll them down?
A. Well, with the assistance of some other men, and just pushed on them, that is all.
Q. You rolled them down by hand?
A. By hand; yes, sir.
Q. So that temporarily you weren't even using your truck?
A. No, we weren't even using the truck at that time.
Q. That is one of those jobs that you were called upon from time to time, as you say, constantly to do other things around there?
A. Just once in a while. That work wasn't done very often there.
Q. Well, then what happened then?
A. When we got them down on the turntable the table was turned around and lined up with the track, next to the track where the wheels were to go in. Then the wheels were pushed off onto this other track so the engine could be pulled out of the stall that it was in so those wheels could be placed down in the pit and put up in under the engine, and we had pushed the wheels off the table on this track in back of the engine, and they were blocked there while the table was to be turned around and lined up with the track to pull the engine out. And we waited there for a time while they pulled the engine out on the table, and then we were all in position on those wheels waiting for the signal to move them forward, when suddenly the foreman removed the block—I don't recall them giving any warning of it. I don't know if any of the rest of them do or not.

Q. But you heard none?

A. I heard no warning given. The block was kicked from under the wheels and the wheels started rolling back, and [fol. 155] I heard somebody shout. I was pushing on them when I saw the block go from under the wheels, and I took that as a cue to push, and I was pushing as hard as I could on them, but before I realized what was going on the wheels were coming back on me.

Q. Instead of pushing forward?

A. The wheels didn't move forward at all.

Q. I say, instead of going forward.

A. I was pushing forward on the wheels, but they was so heavy that if there was anyone else pushing on them there wasn't sufficient power in back of the wheels to move them forward. They had been blocked with the counterweights a little to the back.

Q. Where was the block kicked out, from in back of the wheels?

A. From back of the wheels.

Q. And were you in back of the wheels?

A. I was back of the wheels.

Q. The operation that was supposed to be done was for the wheels to be moved forward?

Mr. Rockwood: That is objected to on the grounds it calls for the conclusion of the witness.

The Court: Objection sustained.

By Mr. O'Neill:

Q. Which way were you told to move them?

Mr. Rockwood: That is objected to.

The Court: Overruled.

Mr. Rockwood: Exception.

The Witness: We were supposed to move them forward, [fol. 156] and we were not told to move them anyway—there was no warning given that we should move them

Mr. Rockwood: I move to strike it out.

The Court: I grant the motion to strike out the part that "We were supposed to move them forward."

By Mr. O'Neill:

Q. Well, they were to go where?

A. They were to go out on the table.

Mr. Rockwood: That is objected to. I move to strike it out as a conclusion of the witness.

The Court: I think I will leave it in.

By Mr. O'Neill:

Q. You were putting these wheels back on the locomotive?

A. They were to go back out on the turntable. They had only been put on this track for the purpose of standing them aside until they got the engine out of that track where the wheels were really going.

Q. Well, in order to get out on the proper track which way would they have to move, forward or backward?

A. Forward from the position we were standing.

Q. Now, instead of going forward after he kicked the block out, the wheels came back towards you men; is that right?

A. Yes, sir.

Q. And the block was kicked out without any warning to you?

A. Without any warning.

[fol. 157] By the Court:

Q. Had you seen these wheels or similar wheels put back on engines before?

A. Yes, sir.

Q. Well, where did that happen, on the turntable or some other place?

A. You mean putting the wheels back on the engine?

Q. Yes.

A. That happened in the stalls, in the pits.

Q. In the pit? It wasn't the turntable?

A. No, sir.

By Mr. O'Neill:

Q. This operation was to get the wheels out on the turntable so that the turntable could be arranged to line up the track and the wheels moved in from it?

A. Exactly.

Q. Now, then, what happened when these wheels, instead of going forward, came back, rolled back after the foreman kicked out the block?

Mr. Rockwood: That is objected to. He hasn't said the foreman kicked out the block.

The Court: I will ask him now.

Q. Do you know who kicked the block out?

A. I said the foreman kicked the block out.

The Court: He says it now, anyway. So go ahead.

By Mr. O'Neill:

Q. Go ahead. What happened?

[fol. 158] A. The wheels started rolling backwards, and, well, I don't know—several people started shouting for me to get out of there, they started shouting "Get out of there; get out of there."

Q. And you tried to escape, did you?

A. I tried to escape. My first thought was to duck down under the wheels.

Mr. Rockwood: I move to strike out what his thought was.

By the Court:

Q. Tell what you did.

A. I was going to duck under the wheels, realizing that I could get clear of it that way, and as I looked down I saw another man down there on his hands and knees. So I realized it would be folly for me to drop down on his back there. The thought in my mind was that I would get crushed.

Mr. Rockwood: I move to strike out what he realized and what the thought in his mind was.

Mr. O'Neill: That is admissible evidence in the case of a man endeavoring to escape.

The Court: I will strike out what thought was in your mind, but tell what you tried to do.

Mr. O'Neill: Exception.

By Mr. O'Neill:

Q. What did you try to do?

A. I tried to find a way to escape from in back there.

Mr. Rockwood: I move to strike out the conclusion. Ask him to state what he did.

[fol. 159] The Court: I think I will let it stand.

Mr. Rockwood: I will take an exception.

By Mr. O'Neill:

Q. Go ahead.

A. And as I saw underneath the wheels I knew it was impossible for me to get out that way, and I knew I had to go somewhere.

Mr. Rockwood: I move to strike out as a conclusion that it was impossible.

The Court: I will strike it out, but I will ask you whether there was room for you to get down underneath, with him there.

A. No, because those wheels——

By Mr. O'Neill:

Q. "No" is enough. Go ahead. Tell us what you did then.

By the Court:

Q. What did you do?

A. Well, I put my hand up on the back end of the engine. The wheels were so close at that time that I put my hand on the back end of the engine that was standing there and my other hand on the journal of the wheels, in an attempt to raise myself clear. I was afraid of being crushed between the wheels as I came back against the engine, and I realized I couldn't escape at the side because those wheels are so big around that the wheels are far ahead of the journal coming back, and I was just in the act of raising myself clear there when the impact of the wheels hitting the back end of that engine slid my hand off and I fell over backwards off the wheels.

[fol. 160] By Mr. O'Neill:

Q. And your back fell on what?

A. Right down between the tracks, in the cinders there.

Q. Were there ties and rails there?

A. They were covered with cinders. It is hard packed there with cinders over the ties.

Q. Anyhow, you fell there?

A. I fell right between the tracks.

Q. And what did you experience then; what did you feel in your back?

A. Why, I experienced a sharp pain shooting up through my back, and every bit of strength seemed to leave me, and I made an attempt to get up, and I couldn't get up—as I attempted to get up I fell back down again. And the pain was so terrible I just gave up. I didn't make any further attempt to get up for a minute. Then someone came and helped me up and helped me over to a can there. I sat down on that. It was Johnny Morris that helped me up. And he had to go back out to the turntable, and he asked me if I would be all right, and I told him I thought I would be all right. So he went on and left me there, went on out to the table. I don't know just what he might have done at that time, but I was left alone, and I sat there, and the pain was so intense that I wanted to move, and I didn't know where to go or what position to get in to relieve myself. So I started up along the side of the engine. I got up and caught hold of the side of the engine and helped myself along up there until I came to the front end of it. And there was what they call a hump car there, has a platform on, it is flat. So I laid down on that. And I stayed there until my helper came back up and asked me how I felt, and I told him I didn't feel good at all, I had terrible pain.

[fol. 161] Mr. Rockwood: I move to strike out the conversation.

The Court: Of course, I will have to.

By Mr. O'Neill:

Q. What was your condition during that time? Tell it yourself—not what you told him—but tell the jury about it now, how your pain was.

A. Well, I had terrible pain shooting up through my back. The sensation I had, it felt that my back was broken.

Mr. Rockwood: I move to strike out what the sensation was, that his back was broken.

The Court: Motion denied.

Mr. Rockwood: Exception.

By Mr. O'Neill:

Q. Go ahead.

A. It was just that I was wobbling that way (indicating), and the feeling that those bones were shoving up through there, or something sharp was thumping at my back. I just couldn't seem to balance myself at all.

Mr. Rockwood: I move to strike out the entire statement as not proper characterization.

The Court: Motion denied.

Mr. Rockwood: Exception.

By Mr. O'Neill:

Q. Go ahead.

A. And one of the other men came over then and wanted [fol. 162] us to do a job on an engine and I couldn't get up. So my helper went down and brought the truck up, and as he came up with it I had gotten up to a sitting position, and I got over and caught hold of the truck, and I hung on the truck as he went up to that engine. I don't know the number of the engine. And he put the truck in position, and I hung on the back end of the truck and worked the controls and lifted a pump rack up in position on an engine. Then I got on the truck again and he took me down part way through the roundhouse and helped me from there up to the back shop, and I laid down up there. And it was nearly noon, and at noon he went in and punched my card out, and when the whistle blew to go back to work I was unable to get on my feet at all.

Mr. Rockwood: I move to strike out "I was unable to get on my feet at all."

The Court: Motion denied.

Mr. Rockwood: Exception.

By Mr. O'Neill:

Q. How did you feel in the back? Did you try to get up on your feet?

A. I had the same sensation, feeling, in my back that I had in the beginning, but I couldn't get up on my feet. They carried me from the back shop where I spent the noon hour.

Q. Where did they carry you to?

A. Over across the tracks and put me in a car and took me to Walden to Dr. Stevens.

Q. How far is Walden from this place?

A. I should say 3½ or 4 miles.

Q. What did Dr. Stevens do for you?

[fol. 163] A. Not much of anything—put me down on the floor and let me squirm around there, and he said he couldn't give me any treatment, said "The man is seriously injured. His place is in the hospital."

Mr. Rockwood: I move to strike out what Dr. Stevens said.

The Court: Motion granted.

By Mr. O'Neill:

Q. Well, he sent you to the hospital that same day?

A. He called for an ambulance and sent me to the hospital.

Q. And you went to this Horton Memorial Hospital?

A. Horton Memorial Hospital, at Middletown.

Q. And you remained there until when?

A. November 2nd, I believe.

Q. And you went in there in September?

A. September 2nd.

Q. So you were there just two months?

A. Nine weeks, I believe it was.

Q. Now, just tell the jury in detail how you felt during that nine weeks that you were in the hospital?

A. Well, I still had this pain in my back and that same feeling that I had right after the accident, that there was something sharp that was tugging me in the back; and they seemed to be unable to relieve me of that pain. It continued there.

Mr. Rockwood: I move to strike out what they seemed to be unable to do.

The Court: Granted.

The Witness: I was unable to get any relief from that [fol. 164] feeling, it just seemed to stay there at all times.

By Mr. O'Neill:

Q. Now, before this accident, were you in good health?

A. Yes, sir.

Q. Without injury to your back? Your back was not injured?

A. No, sir.

Q. You had, while you were on the railroad, some other injuries, did you?

A. I had a slight injury, but it was of no serious result.

Mr. Rockwood: I will take "I had a slight injury." I move to strike out "But it was of no serious result" as a conclusion.

The Court: Motion granted.

By Mr. O'Neill:

Q. When did you have some previous injury, what part of you was injured, how soon did you go back to work, and did you continue working up until the time of the accident?

A. I worked on after the accident for some time.

By the Court:

Q. After this former accident?

A. Yes, and then I felt quite sore, so I spoke to the foreman about making out an accident report.

By Mr. O'Neill:

Q. At first they didn't make out any report at all, I mean of your injury?

A. No, there was no report made out at first about it.

[fol. 165] By the Court:

Q. You are talking about the former accident?

A. Yes, sir.

By Mr. O'Neill:

Q. You weren't carried away, or anything like that?

A. Oh, no. I was just wiping the grab irons on an engine that had been washed, and the steps were all wet and slippery, and my foot slipped, and I sat down heavy. That is all there was to it.

Q. And how long did you lay up from that?

A. I really wasn't laid up at all.

Q. Well, how long did you stay off in number of days, or how long did you keep going to the doctor's?

A. I went to the doctor and he told me there was nothing the matter.

The Court: No; you can't tell what he told you.

By Mr. O'Neill:

Q. You went to a doctor?
A. Yes, sir.
Q. Company doctor, was that?
A. Yes.
Q. And you went to the office?
A. Twice.
Q. And did he then direct you to go back to your usual work?
A. The first time he directed me to go to Newburgh for an X-ray.
Q. Then what?
A. I was to come over in two days and get the report of it.
Q. Then you went back again?
A. I went back the second day, that is, the third day. He told me in two days to come back.

[fol. 166] Mr. Rockwood: I object to what he told him.

By the Court:

Q. You went back the third day?
A. For the report.

By Mr. O'Neill:

Q. Did he tell you to go back to work?

Mr. Rockwood: That is objected to as hearsay.
The Court: Overruled.
Mr. Rockwood: Exception.

The Witness: Yes.

By the Court:

Q. Did you go back to work?
A. Yes.
Q. When was this?
A. Well, I had gone——

By Mr. O'Neill:

Q. Well, were you back to work almost a month before this accident?

A. Yes.

Q. You were back to work almost a month or a short time less than a month before this accident; is that right?

A. I believe that was in July, and this last accident occurred on September 2nd.

Q. And during that time when you went back to work, from that time until you were injured on September 2nd, were you working every day doing this hard work six days a week?

A. Every day, yes, that is, working days.

Q. And how did you feel? Did you feel any results of [fol. 167] this old injury you had?

A. Oh, I felt all right.

Q. Felt all right?

A. Absolutely.

By the Court:

Q. How did you walk?

A. Why, I walked perfectly normal.

Q. How was your right foot?

A. Perfectly all right. I never had any trouble with my right foot, either foot.

By Mr. O'Neill:

Q. And how did your back feel that time after you went back to work?

A. It was all right then.

Q. It was all right up to the time you were hurt this time?

A. Just a little soreness there, that is all, but it all passed over.

Q. It had entirely passed away before this accident, had it?

A. Had entirely passed away before this accident ever occurred.

Q. Well, then, after this two months in the hospital what further treatment, if any, did you get?

A. I went back after I was discharged from the hospital, I was instructed to come back to Dr. Stivers' office, and I

made calls back there for examination and continued to do that up until just recently.

Q. How often did you keep on going to Dr. Stivers' office? When did you stop?

A. I went up about every two weeks or every three weeks, depending on what the condition was and how I felt at the time. It was in the winter time then. It is a drive of 16 miles. It wasn't just pleasant to go.

[fol. 168] Q. When was the last time you were there, if you remember, down to Dr. Stivers?

A. Around the middle of August, I believe, or the latter part of August.

Q. Of last year?

A. Of this year.

Q. Well, now, how does your back feel at the present time? Just tell us how your back feels, and just tell us your whole general condition since this accident?

A. My leg and foot is numb——

By the Court:

Q. That is, the right leg?

A. This leg (indicating), which is my right leg. It is numb. It feels as if it is sleeping all the while. And I don't have the control of my foot, and my back is very sore and painful. I have a great deal of pain in it at all times, and without the cast I am unable to stand or walk. I still have that weak feeling there that I can't support myself.

Q. At the place where you had that original feeling immediately after the injury?

A. Yes, sir.

Q. And you have got a brace on now, of course?

A. Absolutely.

Q. Two were furnished to you, ordered by the doctor?

A. Yes, sir.

Q. And you wear one for a day or so, and you take it off to let it dry out, and in the meantime wear the other; is that right?

A. Yes, sir.

Q. And with these conditions that you are in how do you sleep? How does your back and other injuries affect you while you are endeavoring to sleep?

A. I don't sleep very well, very restless, and I have a great deal of pain. If I get any sleep at all and go to roll [fol. 169] over, why it creates so much pain it awakens me, and it is a long time before I can get to sleep again. Lots of nights I go to bed and I can't get to sleep at all, I just lie there and endure those pains until I am practically exhausted before I get to sleep.

Q. You lie there suffering until you finally fall asleep from exhaustion?

A. That is all I can do.

Q. And does that happen weekly, or about how often a week?

A. Well, it isn't an uncommon occurrence. It happens quite frequently. There is rarely a night that I have a good rest or a complete rest. I have those pains every night, in fact, during the day I am having pains at all times—my every movement causes me pain.

Q. These bad spells when you can't sleep for hours and lie there suffering until you are exhausted at night—how often does that happen, about?

A. Sometimes three or four times a week. There is nights that I don't sleep at all.

Q. Would it average twice a week?

A. Yes, it would average more than twice a week. It would average at least twice a week.

Q. Have you been able to earn anything since this accident?

A. No, sir.

Q. You have not earned anything?

A. I have had no income at all.

Q. Now, up to the time that you instituted this suit the railroad company, I assume, was paying Dr. Stivers, as he says. Is that correct?

A. Yes, I believe so.

Q. And when was it, about, that you instituted this suit —about May 26th, 1930?

A. I believe it was about that time. I don't know the exact date.

Q. From that time have you had any medical expense with the doctor?

A. Yes, sir.

[fol. 170] Q. What about it, tell us?

A. Well, my trips to him there, and the cane I have had to buy, and that cast I bought.

Q. You bought this cast, did you?

A. Yes, sir.

Q. Did you buy both of them or one of them?

A. I bought that one. The other one was furnished me at the hospital.

Q. He told you to have another one to replace that?

A. He instructed that one to be made and he supervised it. He was present at the time it was being made—Dr. Stivers.

Q. And where was that made?

A. At the Horton Memorial Hospital at Middletown.

Q. And how much did you pay for that one?

A. That one?

Q. Yes (indicating Exhibit 9).

A. Thirteen dollars.

Q. And then since that time have you made other trips to doctors?

A. Yes, sir.

Q. How many times did you visit a doctor since you brought suit?

A. Dr. Stivers?

Q. Yes.

A. I don't remember just how many times.

The Court: He said about every two or three weeks.

The Witness: Since my discharge from the hospital I have made about 19 or 20 trips up there.

By Mr. O'Neill:

Q. And have you paid him for that?

A. No, I still owe that.

Q. He hasn't sent you his bill for that?

A. No, he hasn't.

[fol. 171] Q. Now, some testimony has been given to the effect that at one time a doctor in this case recommended diathermy or electrical heat.

A. I received that at the hospital.

Q. And that there was some question of continuing or not continuing it. I forget the details of it. Tell us about that.

A. I received diathermy treatment at the hospital, and it was stopped after a short time because it caused me a great deal of pain due to the reaction of the nerves.

Mr. Rockwood: I respectfully move to strike out "Due to a reaction of the nerves."

The Court: I will have to grant that. "Caused me a great deal of pain" may stay in.

By Mr. O'Neill:

Q. After these treatments of diathermy, state whether or not it did cause you a great deal of pain in the place where you were injured and in the legs? Did it?

A. It did, very much.

Q. Well, then, what happened after that?

A. The doctor ordered them to discontinue the treatment. He asked me if it helped me any, made me feel any better, and I told him what the result of it was, and he said that it was the reaction of the nerves, they wouldn't stand the treatment, so he ordered it discontinued.

Q. So you are unable now to get about except with this brace and cane?

A. This is the only way I can get about, and I can't walk far this way.

Q. You did get about to the doctor's, and, for instance, [fol. 172] you have come over here from your home. How did you get over here?

A. My wife drives me in the car.

Q. You have a car and your wife drives you?

A. Yes.

Q. Your wife drives you over?

A. Yes, sir.

Q. And drives you about when you have to be driven?

A. Yes, sir.

Q. Did you at any time yourself endeavor to drive it?

A. I have tried to.

Q. Did the doctor tell you to see what you could do?

A. Dr. Stivers told me to try to drive. I asked him about it.

By the Court:

Q. He told you to try to drive. Did you try?

A. Yes, I did.

By Mr. O'Neill:

Q. With what result?

A. Very painful. I had to discontinue it. I tried several times to do it. He told me if I would do some of my regular

habits that way it might tend to strengthen my back and my legs, and probably help me to recover the use of them in that way, but it was so painful I couldn't do it. I tried several times to do it.

Q. You tried all the things that he recommended, did you?

A. Yes.

Q. With the result as you say?

A. Well, the result was that I didn't have full control of the car and I couldn't handle it quickly enough, and I was foolish to go on and do it when it was causing me such pain, and so I had to discontinue.

[fol. 173] The Court: Recess until ten o'clock tomorrow morning. Gentlemen, don't talk this case over at all until it is finally submitted to you, and don't let anybody talk to you or about it in your presence or hearing.

(An adjournment was here taken to October 3rd, 1930.)

Carmel, N. Y., October 3, 1930.

(Same appearances.)

CLARENCE BEZUE, being recalled for further examination, testified as follows:

Direct examination (continued).

By Mr. O'Neill:

Q. Mr. Bezue, I noticed that when you were going upstairs in the hotel here last night the manner in which you walked. Will you explain to the jury the manner in which you are obliged to walk upstairs now since this injury? I mean for the record; perhaps the jurymen may have seen you around.

A. It is very difficult for me to get up or downstairs, inasmuch as I have to twist my body so much. It causes me such great pain, and the only way I can get up or downstairs is to get hold of someone for support, or to get hold of the railing and pull myself up and help myself in that way.

Q. You go by first putting one foot up on a step?
A. I can only go one step at a time.
Q. And then you lift the other foot up one step and go [fol. 174] up to that?
A. I can't raise my right foot up to the step. I have to put my left foot up first and then bring my right one up.
Q. And in trying to sleep at night do you sleep mostly on your stomach?
A. Entirely on my stomach.
Q. That is due to the painful condition of your back when you try to sleep there?
A. I can't lie on my back at all. I have to sleep on my stomach.
Q. And before this accident did you sleep well and usually upon your back?
A. I did, and usually upon my back.

Mr. O'Neill: That is all.

Mr. Rockwood: If your Honor please, Mr. Brumley has a few questions to ask, I believe, as to interstate commerce. Unless objection is raised, we would both like to cross examine as to different features.

The Court: Let us see if there is any objection to that. In other words, Mr. Brumley wants to handle the interstate commerce, and you want to handle the rest of it?

Mr. Rockwood: That is right, sir.

The Court: Is there any objection?

Mr. O'Neill: I don't see why it should be done.

Mr. Rockwood: The only reason is, if your Honor please, that this was treated as a separate matter and a good deal of work had been done in it before I came into the case.

The Court: I will allow Mr. Brumley to direct his cross examination solely to interstate commerce questions, then [fol. 175] I will let you cross examine as to the other matters.

Mr. O'Neill: We except.

Cross-examination.

By Mr. Brumley:

Q. Mr. Bezue, how long had you worked for the company?
A. About a year.

Q. And during that time were you at Maybrook?
A. Yes, sir.
Q. You didn't work any other place?
A. No, sir.
Q. And during that time did you have one kind of a job?
A. No, sir.
Q. What did you first do?
A. I started as an engine wiper.
Q. How long were you an engine wiper, about how long?
A. 8 or 9 months.
Q. And then for 3 or 4 months you had been at the job that you were working at the day you were injured, is that right?
A. Yes, sir.
Q. Now, you were classified as a laborer, weren't you?
A. I was classified as a truck operator, but that came under the labor foreman.
Q. Yes. For operating this truck you received a few cents more an hour, didn't you?
A. A bonus, yes.
Q. But you were in what they call the unskilled labor gang, is that right?
A. Yes, sir.
Q. Now, I show you this print and ask you if that is one of the trucks or the kind of truck that you operated prior to your accident?
A. Similar to this one, yes. There were 2 of those trucks.
Q. Yes, but that is one of the kind?
A. They were of different types.

[fol. 176] By Mr. O'Neill:

Q. Well, you say they were of different types. What was the difference in them?
A. Different in the construction of the truck.

By Mr. Brumley:

Q. Well, were they about the same size?
A. About the same size.
Q. That is one of them, is it?
A. Yes.

Mr. Brumley: I offer the picture in evidence.

(Received in evidence and marked Defendant's Exhibit A.)

Mr. Brumley: The exhibit is confined to the picture in the upper left hand corner.

By Mr. Brumley:

Q. Now, I show you another picture, Mr. Bezue, and ask you if that also shows the kind of a truck that you operated?

A. No.

Q. That does not.

Mr. O'Neill: Mark that for identification so we will know the one that doesn't.

(Picture marked Defendant's Exhibit B for identification.)

Mr. O'Neill: The one that he says is one of the types is on a printed pamphlet marked The Elwood Parker Electric Co. Is that right?

Mr. Brumley: Yes.

[fol. 177] By Mr. Brumley:

Q. On the morning of the accident do you remember whether you were operating at any time the kind of a truck that I have shown you and that has been marked in evidence?

A. Yes.

Q. You went on duty about eight o'clock?

A. Yes, sir.

Q. And this accident happened about eleven o'clock?

A. Somewhere therabouts—I am not sure of the exact time, eleven, possibly eleven-thirty.

Q. And during the morning you were engaged part of the time in operating an electric truck, is that right?

A. Yes, sir.

Q. Now, I show you a protograph and ask you if that is a correct representation of the roundhouse at Maybrook where you did some of your work?

A. Yes, I believe it is.

Q. And that shows the turntable out in front, doesn't it, at the roundhouse?

A. Yes.

Mr. Brumley: I offer it in evidence.

The Witness: There is a sign that has been added to the turntable there. I never saw that before.

By Mr. Brumley:

Q. A sign on the turntable?

A. "Let's all be careful, avoid injury." I never saw that sign there.

Q. Well, you don't know then whether that was there at the time of the accident, or not?

A. I am positive it was not there at the time of the accident.

[fol. 178] Q. Except for that sign though you would say that so far as the buildings are concerned and the position of the turntable and the tracks it is a correct photograph?

A. The position of the turntable hasn't anything to do with it. That might be in any position.

Q. Well, I mean the location of the turntable.

A. The location of the turntable, and the buildings, the tracks, as near as I can see are the same.

Mr. O'Neill: Well, with the exception of the sign, which is shown to have been put up there since, we haven't any objection as showing the general scene.

The Court: It may appear on the record that the object is to show the general scene, and that the sign in question was not there at the time of the accident.

Mr. Brumley: So far as the proof now shows.

The Court: So far as the proof now shows.

Mr. O'Neill: Now, so as to be sure you haven't done anything else here that we don't know anything about, there is no particular significance, I assume, in the position of the turntable at the time the photograph was taken.

Mr. Brumley: No, nor of the wheels, or any of the rolling stock.

Mr. O'Neill: Or of any of the locomotives that are in here.

Mr. Brumley: Not at all.

Mr. O'Neill: Well, then, we haven't any objection.

[fol. 179] (Photograph received in evidence and marked Defendant's Exhibit C.)

By the Court:

Q. I will ask the witness: is there a drop track in each one of these stalls?

A. No, not in each one. Just——

Q. In some?

A. In some of them there are, yes.

Q. And in replacing these drive wheels, would the wheels be taken into the stall where the drop track is, and then dropped, and then the engine run over, and then the wheels raised up? Is that the process of the works?

A. Yes.

Q. And the repairs that were made would be made in the stall, is that the idea?

A. Wherever the engine happened to be, unless it was something that necessitated taking the engine out on one of the other tracks. They had a track at that time for the purpose of putting wheels on with springs, where the track was tipped down. They would run the engine over there until the set of wheels that they were working on dropped down lower, and then it would relieve the tension of the springs.

By Mr. Brumley:

Q. Now, Mr. Bezue, I show you another photograph and ask you whether that is a photograph of the type of wheel that you were assisting in rolling that day of the accident—generally the type? I don't mean in any particular detail.

A. Well, similar to it, but still and all these wheels look smaller, I don't know if this is the type or not. These wheels [fol. 180] look smaller than the ones that we were rolling. We were rolling high drivers—these look as though they might be small wheels.

Q. The wheels that you were rolling were the high driving wheels of the engine, weren't they?

A. Yes, sir.

Q. And they were known as the main driving wheels?

A. As main drivers.

Q. And what do you mean by main driving wheels? I mean what does the "main" mean?

A. Well, that is the main driving set where the driving rod fastens onto.

Q. So that the driving rods fasten onto the wheels, is that right?

A. Yes.

Q. And the wheels were moved by those driving rods?

A. Surely.

Q. Were any of the other wheels moved by driving rods?

A. Side rods.

Q. They had side rods, did they? But these wheels that you were moving on the day of the accident were moved by the main driving rods, is that right?

A. I don't know. I don't understand all the mechanism of engines, that wasn't my work.

Q. But they were—

A. They were main drive wheels. Now, as far as to go into detail and explain what work those wheels did and how the wheels did it, I can't do it.

Q. How heavy were they, do you know?

Mr. O'Neill: I object to it. He has no way of measuring them.

The Court: He may ask him how heavy they were, if he knows.

The Witness: I know they were too heavy.

[fol. 181] Mr. Brumley: I move to strike it out.

The Court: Motion granted. But the answer is "I don't know," is that it?

The Witness: I don't know the weight of the wheels.

By Mr. Brumley:

Q. Well, can you give us any idea whether they were one ton or 5 tons or 10 tons or what?

Mr. O'Neill: I think this is more or less wasting time. Somebody who knows can testify about it more or less exactly.

The Court: Well, I will allow him to do it on cross-examination. I don't know where he will get on it, but it is proper cross-examination.

He asked you if you know?

The Witness: I should say at least 10 or 12 tons, something like that, as near as I could guess at it.

By Mr. Brumley:

Q. That is your best opinion?

A. Well, they are awful heavy. Now, I can't tell you anything about the weight of them. There was no way of my knowing.

and ask you whether that photograph shows the Whiting

Q. Now, Mr. Bezue, I show you another photograph and ask you whether that photograph shows the Whiting Hoist Building and the machine shop at Maybrook?

A. I don't know anything about the Whiting Hoist. It was known as the back shop.

Q. You never heard that called the Whiting Hoist in there?

A. There was a hoist in there.

[fol. 182] By the Court:

Q. You always called it the back shop?

A. Always called it the back shop.

By Mr. Brumley:

Q. Well, then, to the left of the back shop is another building. Is that the machine shop?

A. The offices are in this end of it (indicating on photograph). From the office there is the dispatcher's room, engineer's room along in there (indicating).

Q. Does that photograph show the machine shop?

A. No.

Q. It does not?

A. It does not.

Q. Mr. Bezue, Mr. Hessberger asked you to help move these wheels, didn't he, on the morning of the accident?

A. Yes, sir.

By the Court:

Q. Was he the foreman?

A. Yes, sir.

By Mr. Brumley:

Q. Was he the man to whom you reported in your work?

A. What do you mean, reported?

Q. Well, I mean was he your foreman on that day and other days?

A. Yes, sir.

Q. And you reported to him, didn't you?

A. Yes, sir.

Q. Now, how long was it, about, before the accident when he asked you to help out on these wheels?

A. I really don't know.

Q. Well, I don't mean in seconds, but I mean was it a half hour or was it an hour?

A. No, it was more than that. It was probably a couple [fol. 183] of hours or more.

Q. Prior to the accident. So that for about 2 hours prior to the accident your work was in connection with these main drive wheels, is that right?

A. Waiting for them to get them ready to roll out. There was so much puttering around that he was running around getting the rest of the men together to come up to help.

Q. And during those two hours you weren't doing any work other than work in connection with those main drive wheels, is that right?

A. I took a block out of that lathe.

Q. Well, those main drive wheels were in the lathe, weren't they?

A. I believe they were.

Q. And in taking the block out of the lathe you were helping to get the wheels out of that lathe, weren't you?

A. I was working at my regular work with the truck in removing that heavy object.

Q. Well, that was in order to get the wheels out of the lathe, isn't that right?

A. I don't know what their object was in taking it out.

Q. The wheels were in the lathe when you went to the shop, weren't they?

A. Yes, as I remember it.

Q. And did you do any work in taking the wheels out of the lathe?

A. The men that were working around the lathe was doing that.

Q. Did you do any?

A. No.

Q. You waited until the wheels got out of the lathe, is that right?

A. We brought our truck up there and took that block out of the way and then did the rest of the work.

Q. And this block was in their way so that you removed it with your truck, isn't that right?

A. I don't know why they wanted that block out.

[fol. 184] Q. Didn't you just say you took the block out of the way?

A. I just said they asked me to take that block out of that lathe, and I did it. They gave no explanation of why they wanted it out or I didn't ask why they wanted it out.

Q. You saw the wheels removed from the lathe?

A. I saw the wheels removed from the lathe, surely.

Q. Now, I show you a photograph and ask you if that is a photograph of the lathe in which the wheels were on the morning of the accident?

A. Similar to that, yes.

Q. Well, isn't that the same lathe?

A. I can not say.

Q. Do you recognize that that is part of the inside of the building that you went to?

A. Similar to the one I was in. I couldn't swear that that was the exact building, or that is the exact lathe.

Q. But the lathe was like that, wasn't it?

A. Similar to that one.

Q. And the building that you went to was like that?

A. Similar to that, yes.

Q. And after the wheels had been removed from the lathe they were put on the track, weren't they?

A. Yes, sir.

Q. And how were the wheels removed from the lathe, do you know; by a crane?

Mr. O'Neill: If he saw them.

By Mr. Brumley:

Q. If you know.

A. Yes, by taking them out with a crane.

The Court: You want to mark that photograph for identification?

[fol. 185] Mr. Brumley: I would like to offer it in evidence.

The Court: Well, is there an objection?

Mr. O'Neill: Well, of course. I only object upon the ground I don't know enough about it; and the witness says it was similar, which is not that it was the one. I think at this time it should be objected to.

The Court: Well, I will sustain it unless you identify it. I suggest that you mark it for identification.

(Photograph marked Defendant's Exhibit D for Identification.)

By Mr. Brumley:

Q. After those wheels were removed from the crane then you assisted in rolling them along a track, didn't you?

A. Yes, sir.

Q. And you rolled them along a track to a switch, is that right?

A. Yes, sir.

Q. And isn't it true that that switch was approximately, roughly speaking, about 500 feet from this lathe?

A. Possibly.

Q. That would be a fair estimate of the distance, wouldn't it?

A. As far as I know.

Q. And then after you had rolled those wheels over this switch you assisted in rolling them back on another track, a lead track into the round-house, isn't that right?

A. To the turntable.

Q. To the turntable. And would you say that the distance from that switch to the turntable was 1000 to 1200 feet?

A. I don't know that I would say because I can't.

Q. Well, will you give us your best estimate?

[fol. 186] I can not estimate the distance accurately enough to state it.

Q. Well, you worked there for a period of a year, didn't you?

A. Yes.

Q. Well, can't you tell us about the distance from that switch that you went over to the turntable?

A. No.

Mr. O'Neill: Well, why don't they question somebody that knows and can say exactly?

Mr. Brumley: Well, I assumed that this man would know that.

By Mr. Brumley:

Q. And then you rolled those wheels onto the turntable, didn't you?

A. Yes, sir.

Q. And then after the turntable had been lined up for a particular track you rolled the wheels off the turntable to that track; is that right?

A. Yes.

Q. And then you were about to roll the wheels onto the turntable a second time when the accident happened; is that right?

A. We were there for that purpose, yes.

Q. Yes. And how many men were assisting you in rolling those wheels, do you remember?

A. 5 or 6—not assisting me—including myself there were 5 or 6.

Q. You said yesterday, I think, that these wheels belonged to engine 3221; is that right?

A. As nearly as I can remember, yes, that was the number.

Q. And that was known as a road engine?

A. Yes, sir.

Q. Into the roundhouse came road engines and switch [fol. 187] engines, didn't they?

A. I don't ever recall any switch engines going into the roundhouse.

Q. Well, how about yard engines?

A. I don't recall them going in.

Q. Just road engines?

A. Yes.

Q. And I think you said something about two of the tracks having pits, is that right?

A. I don't know how many of them have pits. I said some of them have pits, not all of them.

Q. Didn't you say that you thought 2 tracks had pits?

A. I did not.

The Court: Not to me. I was the one that asked him that. He said some of them had pits.

By Mr. Brumley:

Q. Do you know about how many tracks went into that roundhouse?

A. Went into that roundhouse?

The Court: Do you mean how many stalls were there?

Mr. Brumley: Yes.

The Witness: Including all of them?

By Mr. Brumley:

Q. Including all of them.

A. All of the tracks going into the house?

Q. Yes.

A. 30, I believe.

Q. And the roundhouse is divided up into sections, I believe, isn't it?

A. 3 sections.

Q. And each section has so many tracks; is that right?

A. Yes.

[fol. 188] Q. Now, you don't know on the morning of the accident where this engine 3221 was, do you?

A. No.

Q. Did you see it?

A. Why, I saw it when we went down there.

Q. Did you see engine 3221 that morning?

A. Why, positively.

Q. And where was that engine that morning before the accident?

Mr. O'Neill: Which engine?

By Mr. Brumley:

Q. 3221.

A. It was right alongside of the track where we rolled the wheels in.

Q. Do you know the number of the track you rolled the wheels in on?

A. I can't remember it.

Q. And had you seen that engine the day before the accident?

A. I couldn't say that I had.

Q. Do you know how long that engine had been in on that track prior to the accident?

A. I am not sure that I do.

Q. Do you know whether it was one day or a week?

Mr. O'Neill: You mean that he remembers this particular engine?

Mr. Brumley: Yes.

The Witness: I should say 2 days.

By Mr. Brumley:

Q. That is your best estimate, is it?

A. 2 or 3 days.

Q. You wouldn't be willing to say that it was not in there longer, would you?

A. No.

[fol. 189] Q. And do you know whether on the morning of the accident prior to the accident there was any fire in that engine?

A. No.

Q. You don't know, or there wasn't any fire?

A. I don't know.

Q. Prior to the accident did you see other men working on that engine?

A. I don't recall that I paid any attention to that engine.

Q. So you don't know what work had been done on that engine?

A. I do not.

Q. Do you know what work had been done on these wheels that you were assisting in rolling?

A. I can't say that I do.

Q. Now, there is a machine shop at Maybrook, isn't there?

A. Yes.

Q. And there is another shop where this lathe was from which these wheels were taken; isn't that right?

A. What do you mean, another shop?

Q. Well; there is a machine shop, isn't there, separate from the roundhouse?

A. The machine shop is down in the roundhouse.

Q. Well, it adjoins the roundhouse, doesn't it?

A. It is all in the same building.

Q. Well, now, let me see—I will show you. Now, the machine shop that I ask you about doesn't show in that photograph, Defendant's Exhibit C, does it (showing witness)?

A. Of course not. You are showing just the front of the building.

Q. And the machine shop is to the right of the buildings shown in that photograph; isn't that right?

A. It depends on how you look at it. If you are looking at the front of it, it is in the back. If you are looking at it from the side, it is to the right of it.

Q. Well, looking at this photograph you are looking at [fol. 190] the front of the roundhouse, aren't you?

A. Yes.

Q. And looking at the front of the roundhouse the machine shop is to the right, isn't it?

A. The machine shop is at the back.

Q. At the back of the roundhouse?

A. Absolutely.

Q. And where is this building that had the lathe in it?

By the Court:

Q. With relation to that photograph.

A. It isn't anywheres near that.

By Mr. Brumley:

Q. Well, is it to the right?

A. I would say it is in the back of it with relation to the photograph.

Q. Had you done this kind of work before, that is, rolling wheels?

A. I had assisted in it before.

Q. On many occasions?

A. Not many occasions; no.

Q. And when you were operating the electric truck at times did you have occasion to carry driving rods on that truck?

A. Yes, sir.

Q. And that truck has a crane on it, hasn't it?

A. Yes, sir.

Q. And you used to lift things with that crane?

A. Yes, sir.

Q. And did you sometimes in the course of your work remove and replace air compressors and brackets?

A. I don't know exactly what you mean by air compressors.

Q. Well, do you know what I mean by brackets?

A. I know a bracket is a bracket. What kind of a bracket do you refer to?

[fol. 191] Q. In connection with engines?

A. Are there only one kind of brackets used on an engine?

Q. I am asking you?

A. I don't know.

Q. Well, did you remove and replace engine brackets of any kind?

A. Yes.

Q. And did you have occasion in the course of your work to remove and replace water pumps?

A. I wouldn't say water pumps.

Q. Well, did you?

A. I said I would not say I did replace water pumps.

Q. Well, I am asking you whether you ever did or not. Did you or didn't you?

A. I am trying to answer you.

By the Court:

Q. Well, do you recollect whether you did or not?

A. I removed a pump, but I really can't say what kind of a pump it was, if it was a water pump or an air pump or what it might have been—I don't know.

Q. Well, then you did remove and replace pumps belonging to engines, did you?

A. Yes, in my line of work with the crane, with the truck.

By the Court:

Q. When you say that, you mean you participated in it with your crane?

A. I helped in it but of course I didn't do the job myself.

By Mr. Brumley:

Q. Did you assist in removing and replacing drive boxes on journals of engines?

A. No.

Q. Never did that; is that right?

A. I don't know.

[fol. 192] Q. Did you ever assist in removing and replacing cylinder heads on engines?

A. Yes.

Q. Did you ever assist in moving the side and main rods of engines from the engine to the cleaning vat?

A. Yes.

Q. And did you ever assist in moving side and main rods of engines to the machine shop?

A. Yes.

Q. And from the machine shop back again to the engines?

A. Yes, sir.

Q. Did you ever assist in removing and replacing drawbars between engines and tenders?

A. Well, to what extent do you mean assist?

Q. Well, helping out other men with your electric truck?

A. Yes.

Q. Did you ever raise or assist in raising the trucks of the tender, the truck frames of the tender, to apply wheels?

A. No.

Q. Did you ever assist in handling the engine trucks?

A. The engine truck?

Q. Yes.

A. What are engine trucks?

Q. Well, I am asking you whether you ever assisted in handling them?

A. I don't know. I don't know what an engine truck is. Would I say I did when I don't know what I am talking about?

Q. I am just asking you whether you did or not. If you don't know, say so.

A. I don't know that I did. I don't know what an engine truck is.

Q. Did you ever assist in handling heavy material from the store room?

A. From the store room?

Q. Yes; did you ever, in other words, assist in taking out heavy material from the store room?

A. To where?

Q. To any place.

A. I would get orders to go and get something for an [fol. 193] engine and bring it to the engine.

Q. Did you ever assist in handling heavy material, taking it out from the store room to any place?

A. I would go to the store room with an order and get the part that the order called for and bring it to the engine.

By the Court:

Q. And was it sometimes a heavy part?

A. Yes.

Q. That is the reason you had your crane to take it with, wasn't it?

A. Absolutely.

By Mr. Brumley:

Q. And some of those parts were water pumps, weren't they?

A. Not from the store room I don't recall getting any water pumps.

Q. Do you recall ever getting compressors from the store room?

A. No.

Q. Or feed water heaters?

A. I don't know what a feed water heater is.

Q. Or springs?

A. I have gotten springs and taken them to the engine.

Q. Driving boxes?

A. And put them in the engine, assisted to put them in the engine.

Q. Driving boxes?

A. Springs I am talking of.

Q. Springs. How about driving boxes?

A. I don't recall getting any.

Q. How about cylinder heads?

A. How about them?

Q. Did you ever get them out of the store room?

A. Not that I can recall.

Q. Did you ever assist in removing and replacing pistons [fol. 194] from cylinders of engines?

A. Yes, sir, I believe so.

Q. And did you ever assist in removing and replacing valves from the valve chambers of engines?

A. I don't know just what you mean by a valve chamber.

Q. All right. Did you ever assist in removing and replacing rails at drop pits?

A. Yes.

Q. And if you hadn't been injured on that morning you expected to do that very thing, didn't you?

A. How would I know what I expected to do?

Q. I am asking you if you did expect to do it?

A. I don't know what might have been in store for me.

Q. But you did do that work?

By the Court:

Q. On other occasions.

A. On other occasions I did the work as it came up. I never knew what I was going to do from one moment to the next.

By Mr. Brumley:

Q. But you did remove, did assist in removing rails at drop pits; that is right, isn't it?

A. That is right; with the truck I would lift them up.

Q. Then wheels would be put in that pit, wouldn't they?

A. Yes, sir.

Q. Then an engine would be put over the pit?

A. Why, I suppose so.

Q. Did you see that done?

A. I saw some of it done. I didn't see it all done. Sometimes I happened to be near when it was being done.

Q. You knew that was the object of putting the wheels into the pit, didn't you?

A. Oh, yes.

[fol. 195] Q. Then the wheels would be applied to the engine; is that right?

A. Put in position, as far as I know.

Q. Did you ever assist in the actual applying of the wheels to the engine?

A. No.

Q. Now, into this roundhouse, I think you said, in answer to a question by Mr. O'Neill, that about 8 or 10 engines came every day?

A. I couldn't say exactly.

Q. Well, what did you say to Mr. O'Neill?

A. Something like that, I believe.

Q. And some of them stayed in for a period of one day or more, didn't they?

A. I really don't know. I had no occasion to check on the engines, how long they stayed in.

Q. Well, don't you know, Mr. Bezue, as a matter of fact, that some of those engines stayed in for a period of a week at least?

A. I can't say that I do.

Q. You know that some of those engines came in for boiler washes, don't you?

A. Yes.

Q. And you know that those boiler washes were done about every 30 days on an engine?

A. I understood they were done about every 30 days, yes.

Q. And when those engines came in for boiler washes the fires were drawn out of them, weren't they?

A. Why, yes.

Q. And sometimes those engines stayed in for a period of a week or more while they were undergoing boiler washes, isn't that right?

A. I don't know how long they stayed—I don't know that they stayed a week.

Q. You don't know how long they stayed?

A. I know that they was always in a hurry to get them out as quickly as possible.

[fol. 196] Q. I didn't ask you that. I move to strike it out.

The Court: The motion is granted.

Mr. O'Neill: I except.

By Mr. Brumley:

Q. Now, during the period that they were undergoing boiler washes repairs were made on those engines, weren't they?

A. I don't know.

Q. Did you ever assist in carrying things to engines that were undergoing boiler washes?

A. Bring the side rods back and put them on as the engine was about to go out.

Q. Sometimes you would bring the main driving rods back, wouldn't you?

A. Why, naturally, if they were taken off. They weren't always taken off.

Q. Sometimes they were taken off?

A. And sometimes they were not taken off.

Q. And sometimes they were?

A. Sometimes they were.

Q. You didn't actually do any oiling or greasing on engines, did you?

A. I assisted in the greasing.

Q. Did you grease the engine or did you carry grease to the engine?

A. I brought grease to them. Sometimes I put it on them. There was grease brought for the purpose of greasing the bushings when those rods were put on. I sometimes smeared that on—brought a block of grease to be put up in the driving box.

Q. Do you know what the capacity of your truck was, this electric truck, either one of them that you operated?

[fol. 197] The Court: The capacity of the truck, or the lifting capacity of the crane?

By Mr. Brumley:

Q. The lifting capacity of the crane.

A. Not exactly.

Q. Well, about what would you say it was?

A. I don't know.

Q. I said you know that it was more than 100 pounds, or 1,000 pounds or 5,000 pounds?

A. I don't know.

Q. Well, you know it was more than 100 pounds, don't you?

A. I said I don't know.

Q. I said you know that it was more than 100 pounds, don't you?

A. I suppose it was. I don't know.

Q. Well, you know, as a matter of fact that you have lifted things that were very much heavier than 100 pounds on that truck, didn't you?

Mr. O'Neill: I object. I think the exact capacity of the truck can be shown. This man can only guess at it.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: I have lifted things that weighed more than 100 pounds. I have lifted things that I didn't know how much they weighed—maybe they weighed a little less than 100 pounds.

By Mr. Brumley:

Q. How many men were working around the place there doing the kind of work that you were doing at the time of [fol. 198] the accident?

Q. What do you mean, the kind of work I was doing?

Q. Well, doing the kind of work, operating electric trucks, unskilled labor?

A. No one else.

Q. Were you the only electric truck operator there?

A. That day?

Q. No, I mean not that day, but that week?

A. You asked me the time of the accident. That didn't happen the whole week.

Q. About the time of the accident.

A. One other truck operated besides mine, there were one other truck operated besides mine, but he was not there that day.

Q. That is, when you were working were there two electric trucks usually working?

A. Through the week.

Q. During the week. Is that right?

A. Yes.

By Mr. O'Neill:

Q. Two, is that right?

A. Why, surely. That is all they had there.

By Mr. Brumley:

Q. And do you know about how many men there are working around the roundhouse outside of the train crews?

A. No.

Q. Have no idea?

A. No.

Mr. Brumley: That is all.

The Court: Now, as I understand, you have finished your cross examination as to the interstate commerce feature?

Mr. Brumley: Yes, your Honor.

The Court: I will not permit Mr. Rockwood to cross ex-
[fol. 199] amine on that. I limit you on that to one attorney.

Mr. Brumley: I distinctly understand that, sir.

The Court: All right. I want to make it clear.

Cross-examination.

By Mr. Rockwood:

Q. Now, Mr. Bezue, you testified yesterday as to the position that you assumed as these wheels rolled back toward the tender. Do you recall testifying as to that?

Mr. O'Neill: I object to the form of the question as a conclusion—the position he assumed.

The Court: Objection overruled. The question is "Do you recollect testifying to that," I think he so testified, how it was and how he tried to escape it.

Mr. O'Neill: My objection is to the words "You assumed."

The Court: Well, the objection is overruled. I construe that to mean the position he took, which is the same thing. I will allow it.

The Witness: As to the position that I was in when the wheels came back?

By the Court:

Q. Yes. You remember testifying to that, don't you?
A. Yes.

By Mr. Rockwood:

Q. And you said, did you not, that you put one hand on [fol. 200] the tender of the engine that was in the roundhouse?
A. Yes, sir.
Q. And the other hand on the journal of these wheels?
A. Yes, sir.
Q. And endeavored then to pitch yourself up, pull yourself up?
A. On the tender?
Q. Beg pardon?
A. Does that mean just the tank of the engine or the whole back of the engine, or what part do you mean by the tender?
Q. What do you mean by it?
A. I mean I put my hand on the back end of the engine. I don't know the name of that particular spot I put my hand on.
Q. Well, now, I am not trying to catch you. I don't know anything more about an engine than you do. But I assume the engine was running head on into the roundhouse in the way you testified, wasn't it?
A. Yes.
Q. And that you put your hand on the nearest part of the engine to you?
A. Yes.

Q. Now, whether it was the bumper or the fender or the mudguard I don't care, but that is where you put your hand, on the back end of that engine?

A. Yes.

Q. How high was the place that you put your hand on?

A. I don't know.

Q. Well, I mean about. Did you have to reach up for it?

A. Those things were done so quickly that I don't recall how high I reached up or anything about it. Now, I put my hand on the back end of that engine, however high it might be.

Q. Well, now, you have been mussing around engines for a year?

Mr. O'Neill: Now, I object. He showed the position yes- [fol. 201] terday with his hands, and we can tell that better and it saves a lot of time. He can show it again.

The Court: Objection overruled. Go ahead.

Mr. O'Neill: This witness is trying to be precise, like he would about weight, and so on.

The Court: That is all right. Let them work away at it.

By Mr. Rockwood:

Q. Well, do you know from your experience around engines about how high this place was that you put your hands on?

A. Maybe 3 feet, maybe 4 feet, I don't know.

Q. Was it higher or lower than the journal of the drive wheels that you were rolling?

A. I think higher.

Q. And by putting your hand on this part of the engine and on the journal you endeavored then to pull yourself up?

A. To raise myself up above it.

Q. To raise yourself up. And just as you were in the act of trying to raise yourself up there was an impact of these wheels against the engine; is that right?

A. As I was in the act of trying to raise myself up?

Q. As you were in the act of trying to raise yourself up.

A. I was up out of there before that impact.

Q. Then you had raised yourself up?

A. If I hadn't I would have been crushed.

Q. Then the answer is that you had raised yourself up, is it, before the impact?

A. Before the wheels hit the engine?

[fol. 202] Q. Yes.

A. Yes.

Q. Now, the wheels, the rim of the wheels would hit the engine, not the journal, wouldn't it?

A. I can't say—I don't know.

Q. Well, the journal is how far away from the rim of the wheels?

A. I don't know.

Q. Have you any idea?

A. I have an idea.

Q. I mean won't you try and tell this jury now the space between the journal and the outside rim of that wheel so they will understand where you were when this accident occurred?

A. Well, I was in between the wheels, pushing on the journal.

Q. Yes, and how much space was there back of you before the end of the wheels, the rim of the wheels, the tread?

A. I don't know.

Q. Was it one or two feet?

Mr. O'Neill: I object unless it appears which time.

The Court: What he is really asking is what is the diameter of the wheel, as I get it. Of course, he is trying to find out half the diameter, and then if he gets the width of the journal he would get the space between the rim and the journal.

Mr. Rockwood: Yes.

The Witness: Well, I believe the wheels are about 5 or 6 feet in diameter.

By the Court:

Q. What is the diameter of the journal, about?

A. The diameter of the journal?

Q. Yes. That is what we call an axle?

A. Yes.

Q. Could you put your hand around it like that (indi-

[fol. 203] cating)?

A. Oh, no, it is much larger than that.

Q. What is it, a foot through, a foot in diameter, the journal?

A. At least, I would say.

By Mr. Rockwood:

Q. So that there would be a distance of at least two feet between the outside of the journal and the outside of the rim of the wheel, wouldn't there?

A. Probably.

Q. Now, will you look at this photograph and state whether in that photograph you observe the back end of an engine such as we have been talking about (showing photograph to witness)?

A. Well, I see the back end of an engine there. I don't know if it is exactly like the one we are talking about or like the one that was there at the time.

Q. Well, is it approximately like it?

A. It looks about like it.

Q. Can you point out on that photograph to the jury where you put your hand?

A. Oh, that is perfectly silly. The wheels are not on the same track, they are nowheres near the back end of that engine.

Q. Beg pardon. I am sorry I was silly, sir. I was trying to help the jury see where you put your hand.

Mr. O'Neill: I object to such a remark. His business is to ask questions—not to help anybody.

The Court: That is right. But the witness made the remark that the question was silly.

[fol. 204] The Witness: From the picture it looks utterly impossible for a man to reach the wheels and the engine.

By Mr. O'Neill:

Q. You don't mean that counsel is silly. If you did, of course, you apologize for that.

A. No, of course not. I mean that the engine——

By the Court:

Q. What you were referring to, in the photograph, that photograph, the engine is not on the same track that the wheels are on?

A. Yes; and when I said it was silly I meant it was silly to think that anybody could reach those two objects at the same time.

By Mr. O'Neill:

Q. There is a track in between on the photograph, isn't there?

A. Yes.

Q. And that is what you meant by that?

A. Yes, sir.

Q. And you did not at all intend to impugn the brightness of the cross examiner?

A. Not in the least.

By Mr. Rockwood:

Q. Well, now, Mr. Bezue, look at that picture for the purpose of refreshing your recollection. Will you state whether or not when those wheels are rolled back to the back end of an engine the rims of the wheels themselves first come in contact with the engine?

A. I couldn't say.

[fol. 205] Q. You can't by looking at that photograph say?

A. Those wheels that are there do not appear to me to be the type of wheels that we were moving.

Q. Those wheels are main drive wheels that are shown in that photograph?

A. They are drive wheels, but there is a great difference in the size of drive wheels. Those wheels look like a lot smaller type of wheels than the ones we were moving.

Q. But the size of the wheel wouldn't change the fact of whether the rim or the journal would first come in contact with the rear end of that engine, would it?

A. I don't know. That engine is further in the house than the engine that was in back of the wheels.

Q. But that doesn't alter the position of the tracks, does it?

A. No, it doesn't alter the position of the tracks, but it alters the position of the objects on the tracks.

Q. Yes, but it wouldn't alter the position that the wheels would first come in contact with the engine, would it?

A. They wouldn't come in contact with that engine if they rolled back.

Q. They are on a different track, you mean?

A. Yes.

Q. I mean assuming the wheels are on the same track as the engine?

Mr. O'Neill: Well, we object. It is immaterial what would happen here, because the witness has said conditions are not the same.

The Court: Of course they couldn't come in contact with the engine.

[fol. 206] The Witness: Those wheels look much smaller than the type of wheels we were moving.

Mr. Rockwood: I ask to have the photograph marked for identification.

(Photograph marked Defendant's Exhibit E for Identification.)

By Mr. Rockwood:

Q. Now, Mr. Bezue, when you raised yourself up that way did you sit on the journal?

A. I didn't sit on the journal, no.

Q. When you fell down you fell down on which side of the journal, that toward the engine house or that toward the roundhouse?

The Court: Well, you really mean toward the engine or toward the pit, turntable.

The Witness: Yes, the turntable. I fell on the outside, toward the turntable.

By the Court:

Q. Well, was the pair of wheels rolling toward the engine?

A. Yes, sir.

Q. And you fell over it, over the journal, did you?

A. I was in the act of raising myself over to jump over the top. I think it was the impact of the journal or wheels hitting the back end of that engine that caused my hand to slip, and I was so far up that when my hand slipped I came down and I hit on the journal here and I went over backwards.

Q. Over the journal?
A. Over the journal.
[fol. 207] Q. Away from the engine?
A. Away from the engine, yes, sir.

By Mr. Rockwood:

Q. Your hand slipped off then on the side of the journal towards the turntable?
A. I said I fell on the outside toward the turntable. My hand slipped off of the inside.
Q. Your hand slipped off of the inside and you fell on the outside?
A. Yes.
Q. Is that right?
A. Yes.
Q. And the impact of the wheels striking the engine caused your hand to slip?
A. Either that or the turning of the journal, I can't say which, but as I was up there endeavoring to escape from between the journal and the engine.
Q. Had the wheels struck when you slipped?
A. I really don't know.
Q. The journal did not strike the back of the engine, did it?
A. I really don't know. Just at that particular moment I was engaged in other things.
Q. The journal had not struck the back of the engine before you slipped, had it?
A. I really don't know.
Q. You won't answer, you can't answer that question?
A. I can't answer that question. I was in the act of getting out of there when that was happening.
Q. You understand my question?
A. What is the question, please?

(The question was read by the stenographer.)

A. I don't know if it had or not.

[fol. 208] By the Court:

Q. Now he asks you, did you understand that question?
A. Yes.

By Mr. Rockwood:

Q. Now, you spoke yesterday in your direct testimony of sometimes covering the wheels when you moved them? What did you mean by that?

Mr. O'Neill: When he moved them?

By Mr. Rockwood:

Q. When you rolled them.

A. Why, I presume the covering was put on there for the purpose of——

Q. What was the covering that was put on them, what was the material?

A. Burlap.

Q. And that was put over the journal?

A. Sometimes.

Q. So that the journal would move under the burlap?

A. Oh, no, that was not the object.

Q. Oh, I see. The object was to protect the journal?

A. I presume so, because it wasn't put all the way across the journal. It was only put on the shiny parts where the load was carried.

Q. In other words, it was a matter of mechanics with which we are not now interested at all.

A. I couldn't explain just exactly why it was put on there.

Q. Now, in rolling those wheels the counter-weight is the difficult feature of rolling, isn't it; to move the counter-weight?

A. Yes, sir.

Q. And when that counter-weight passes the top in rolling forward the wheels will roll themselves for a distance, won't they?

A. Yes, sir.

[fol. 209] Q. They will roll until that counter-weight comes up on the opposite side?

A. Until it starts up on the other side.

Q. And if you leave the wheels alone after they start rolling they will roll back and forth this way until that counter-weight comes down to the center, won't they?

A. Yes.

Q. And it was the practice in moving those wheels to get them up and then let the wheels run. You didn't have to

put much effort behind them while they were pushing themselves, did you?

A. Don't you believe that.

Q. While they were rolling themselves?

A. While they were rolling themselves, that is when they were rolling on of their own momentum, but then you had to catch them as the counter-weight came up again.

Q. And that is when you had to exert the pressure?

A. That is when you had to exert the pressure to get the counter-weight over the top again.

Q. Yes, and just before it got to the top was the big push, wasn't it?

A. It was the high point.

Q. That is right. So when those wheels are blocked they are blocked so that that counterweight won't start them rolling, isn't that so?

A. When they are blocked?

Q. I mean that they are blocked so that the counterweight won't start them rolling one way or the other; isn't that right?

A. Are you referring to any particular wheels?

Q. No; any time you are rolling these big wheels, and you stop them and they are blocked, it is to prevent their rolling of their own accord, isn't it?

A. Yes.

Q. Now, this point where this accident occurred is perfectly level track, isn't it?

[fol. 210] Mr. O'Neill: I object to the words "Perfectly level."

Mr. Rockwood: Well, I withdraw the word "Perfectly."

Q. The question is: the track at this point of the accident is level?

A. Comparatively level.

Q. Isn't that right?

The Court: He said "Comparatively level."

By Mr. Rockwood:

Q. Now, after the wheels on this morning of September 2nd had been rolled off the turntable and they were put on this comparatively level track did you see them blocked?

A. Yes.

Q. Who blocked them?

A. Mr. Hessburger.

Q. And with what did he block the wheels?

A. A couple of pieces of wood.

Q. Wood perhaps 2 inches, or something like that—2 x 4?

A. No, it wasn't 2 x 4; it was an old piece of split up wood that he put in the back of it.

Q. I see. Just any piece of wood that happened to be around?

A. Well, just the piece that he happened to get ahold of.

Q. And was the block put in front and in back, too, I mean on both sides of the wheels?

A. I don't know that there was a block in the front of the wheels—I am not sure of that.

Q. You don't want to say that there was not?

A. I wouldn't say that there was.

Q. And you wouldn't say that there was not?

A. Oh, I feel quite sure that there wasn't.

[fol. 211] Q. Your best recollection is that there was no block in front?

A. To my best recollection the block was only in the back.

Q. And the block was placed in the back because that was the side the counter-weight was pulling the wheels toward?

A. Why, I suppose so. I don't know just what his object might have been in putting it there.

Q. It wasn't necessary to put a block in front of the wheels if they wouldn't roll that way, was it?

A. I shouldn't think so.

Q. But your best recollection is there was no block in front?

A. I don't believe there was.

Q. No. So they were blocked in back to keep them from rolling back due to the action of the counter-weight, weren't they?

A. Yes.

Q. In other words, the weight of that counter-weight was all the time pushing by the law of gravity backwards toward the roundhouse, wasn't it?

A. I don't know that it was all the while pushing that way, but it was set a little over that side.

Q. And if there had been no block there those wheels would have rolled over toward the roundhouse, wouldn't they?

A. That was proven when the block was removed from there.

Q. Now, who was alongside of you pushing on that journal?

A. An Italian fellow.

Q. Pozzo?

A. Pozzo—Pluto—whatever it might be. I don't know what his name is.

Q. Would you recognize him?

A. Yes, he is here.

Mr. Rockwood: Pozzo, stand up.

(Man stands up in courtroom.)

[fol. 212] By Mr. Rockwood:

Q. Is that the boy (indicating)?

A. Yes, sir.

Q. Who else was in that gang at the time of the accident?

A. The other Italian there with him.

Q. Mariano?

A. That man.

Mr. Rockwood: Mariano, stand up.

(Man stands up in courtroom.)

By Mr. Rockwood:

Q. That is Mariano (indicating)?

A. Yes.

Q. Who else was in that gang?

A. McCoy.

Q. Where was McCoy standing just before this accident occurred?

A. McCoy was standing at my left.

Q. At your left?

A. Yes.

Q. Which side of the wheels were you on? As you faced the roundhouse were you on the left side of the journal or the right?

A. In the position we are in now—I was here (indicating), the Italian lad was here (indicating), and McCoy was there (indicating).

Q. As you sit now——

A. McCoy was on my left (indicating), on your right.

Q. And where was this other Italian that I identified as Mariano?

A. I really don't know.

Q. You don't know which side of you he was standing on?

A. I think he was on the right side—I am not positive.

Q. And where was Hessberger standing?

A. On my right, just outside of the wheels.

Q. Now, the first Italian, Pozzo, was on your right or your left?

A. On my left.

Q. And McCoy was on your left outside, on the outside of you?

A. Outside.

[fol. 213] Q. Where was Kiernan?

A. On my left, outside.

Q. Was there anybody on your right beside Mariano?

A. Hessberger.

Q. Hessberger. Anybody else?

A. I don't recall it.

Q. Was Jennings around that day?

A. Yes.

Q. Was he near the scene of the accident?

A. He was just out ahead of it.

Q. By out ahead you mean near the turntable?

A. Between the wheels and the turntable, yes.

Q. And to the left of the track on which the wheels were standing?

A. Maybe a little bit—I should say about out straight from us.

Q. Now, you said yesterday that Hessberger kicked these blocks out, did you?

A. Yes.

Q. Did he kick them out or pull them out with his hands?

A. Kicked them out with his foot.

Q. Kicked them out with his foot. And you saw him do it?

A. Yes, sir.

Q. Did he get it out the first time he kicked it?

A. Yes, I believe he did.

Q. So he just went up and kicked the block out with his foot like that (indicating)?

A. Well, he was already up there.

Q. But I mean he just stood up and kicked the block out with his foot like that (indicating)—is that right?
A. Yes.
Q. Kicked it out the first crack?
A. I believe so.
Q. And that was the block on the rear of those wheels?
A. Yes, sir.
Q. Which kept those wheels from moving?
A. Yes, sir.
Q. And those wheels, you figure, run 10 or 12 ton?

[fol. 214] Mr. O'Neill: Objected to as already answered on the previous cross examination.
Mr. Rockwood: That is right. I will withdraw it.

Q. Did you ever remove the blocks from between a pair of drive wheels while you were in the act of rolling them?
A. No, sir.
Q. Have you ever seen anybody use a hammer or a sledge to get these blocks out?
A. No, sir.
Q. You have never seen any difficulty in removing blocks from back of the wheels?

Mr. O'Neill: I object to the form of that question.
The Court: Objection overruled.
Mr. O'Neill: Exception.

The Witness: No, sir.

By Mr. Rockwood:

Q. At one time you wrote out or made a statement in regard to the facts of this accident, did you not?
A. Yes.
Q. And you gave that statement in October of 1929, did you not?
A. Probably.
Q. It was while you were in the hospital in Middletown?
A. Yes.
Q. And you endeavored in making that statement to give the facts exactly, did you not?
A. I believe I stated at the time that there were——
Q. No; will you answer my question, please?
A. As nearly as I could remember them.

Q. Now, I understood you to testify yesterday that these wheels had been standing there for some little while before the block was removed?

A. A very short time.

[fol. 215] Q. A minute?

A. Maybe 2 or 5.

Q. I am not particularly interested in the actual time; I simply want to get the fact. It was a matter of some minutes?

A. Yes.

Q. And that was after the wheels had been rolled off the turntable?

A. Yes.

Q. And before they had been rolled on the turntable you had rolled them quite a distance, hadn't you?

A. Yes.

Q. The 6 men that were then employed in that being the men you have already named this morning, is that right?

A. Yes, sir.

Q. All those 6 started from the house or the back shop, didn't they?

A. Yes, sir.

Q. And they were the 6 men who had rolled the wheels all the way from the back shop down onto the turntable and to this point where they were blocked in front of the roundhouse?

A. Yes, sir.

Q. And in rolling those wheels had Hessberger assisted with his own pushing?

A. No.

Q. So that 5 men had actually done the rolling from the back shop to this point where the accident occurred?

A. I wouldn't say 5—maybe 5, maybe 6. I don't know just the exact number of men that were there—I can't recall.

Q. But the same number of men as were standing around these wheels at the time of the accident?

A. Yes.

Q. Had rolled them all this distance?

A. Yes.

Q. And those men hadn't gone away from the wheels during this short interval that elapsed before the block was moved out?

A. How far away?

Q. I mean left the scene of the work at all.

A. No. They may have stepped away from the wheels a little bit—they hadn't gone very far away.

[fol. 216] Q. They were ready in position to go on rolling again?

A. I wouldn't say in position—they were right there, near there.

Q. Now, when you saw Hessberger remove the blocks were these men in position?

A. Yes.

Q. Had they been told to get ready to move those wheels?

A. I don't know that they had been told to.

Q. Had you been told?

A. No.

Q. But they had gotten themselves into position without being told?

Mr. O'Neill: I object to that, "into position." He didn't say anything about position.

The Court: Well, he may ask him. Objection overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer.)

A. Someone may have told them. I don't know—I didn't hear anyone tell me to get in position. I didn't hear anyone tell any of the others to get in there.

By Mr. Rockwood:

Q. Did you hear Jennings say anything just before these blocks were removed?

A. Yes.

Q. What did Jennings say?

A. He called to Jake not to take that block up.

Q. Jake is Hessberger?

A. Yes.

Q. Was that before the block had been removed?

A. Yes, it must have been.

[fol. 217] Q. Or while he was in the act of removing it?

A. Or while he was in the act of removing it, yes, sir.

Q. Which?

A. Just about that time. I don't know.

Q. Well, you told me he just kicked it out with one kick, didn't you?

A. Yes.

Q. And he was standing on the right-hand side of the wheel, on your right-hand side of the wheel, wasn't he?

A. Yes, on the outside of the wheel from me.

Q. On the outside of the wheel. And the block was right at your right hand, wasn't it?

A. The block was right down below where I looked right down at it.

Q. On your right side?

A. Yes.

Q. And Jennings was standing in front of the wheels, slightly to the left?

A. He may have been a little to the left—I wouldn't say that he was.

Q. That was your best recollection?

A. Jennings was out between the wheels and the table—I couldn't give his exact position.

Q. Now, when you heard Jennings call to Hessberger not to remove these wheels were you looking at the block or were you looking at Jennings?

A. I was looking down at the block.

Q. And you saw the block kicked out?

A. Yes.

Q. And you weren't looking at Jennings?

Mr. O'Neill: Objected to as immaterial—that has got nothing to do with it.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: I wasn't looking at Jennings when I saw the block kicked out.

[fol. 218] By Mr. Rockwood:

Q. All right. Now, in making this statement in October that you testified to, do you remember making this statement: "Some Italian fellow and myself went in between the wheels at the rear of the engine, and the other four men stood on the outside of the wheels." Do you remember making that statement?

A. Yes, I believe so.

Q. Do you remember making this statement: "When we were all in position Hessberger removed the blocks"?

A. Yes.

Q. And both of those statements were true then and are true today, are they not?

A. I believe so.

Q. Do you remember making this statement: "I don't know whether he removed the block nearest to me first or last"?

A. No.

Q. You don't remember making that?

A. I don't recall it, no.

Q. Is that true?

A. I told you I don't know if there was a block in the front or not now, but I distinctly saw him take the block out from the back.

Q. But you don't remember making that last statement I just read to you?

A. Probably I made it but I don't just recall it. You asked me if I remembered it.

Q. Did you make this statement: "He used his hands to remove blocks"?

A. No.

Q. You never made that statement?

A. I don't know.

Q. You deny having made that statement?

A. I don't know.

Q. Is that statement untrue?

A. I wouldn't say so.

[fol. 219] Q. Do you remember making this statement, and is it true: "As he was removing the blocks I heard general foreman Jennings shout 'Don't take that block out.' I looked toward Jennings, who was standing out in the direction of the turntable. When I looked at him he was pointing in our direction. The next instant the wheels started to move toward me."

A. Yes.

Q. Do you remember making this statement and was it true then and is it true now: "I tried to get up on axle and over it, but as I did so I fell backward, landing on my back between the rails of the track"?

A. I don't remember just how I might have worded it. That was my object in getting out of there.

Mr. O'Neill: Is that in his handwriting?

Mr. Rockwood: It carries his signature, but I take it that the body of the paper is not in his handwriting.

Mr. O'Neill: The body of the paper is not in his handwriting or words?

Mr. Rockwood: I didn't say "Or words." I said I admit that the body of the handwriting is not in his handwriting, but the words are his.

Mr. O'Neill: That is a conclusion.

Mr. Rockwood: My conclusion.

Mr. O'Neill: All right.

By Mr. Rockwood:

Q. Did you, in making this statement in October, 1929, and prior to your leaving the hospital at Middletown, make any mention whatsoever about putting your hands on the engine in the roundhouse?

[fol. 220] A. What do you mean, putting my hands on the engine?

Q. Beg pardon?

A. When?

Q. You told me early this morning that you tried to boost yourself up between the engine and the journal?

A. Yes.

Q. And did you make that statement in October, 1929?

A. Yes.

Q. And it was written down?

A. I don't know if it was or not.

Q. You read the statement over that you made, didn't you?

A. At that time I was in such misery that I could hardly talk.

Mr. Rockwood: I move to strike it out.

The Court: No, I think I will let it stand.

Mr. Rockwood: Let me see the hospital records, please.

Mr. O'Neill: They are there (indicating).

By Mr. Rockwood:

Q. Look at this paper that I show you. I ask you if that is your signature (indicating).

A. Yes.

Q. And do you observe at the bottom your signature also?

A. Yes. And I understood when giving this statement——

Mr. Rockwood: I move to strike it out.

By the Court:

Q. He only asked you one question. He only asked you, is that your signature at the bottom?

A. Yes.

[fol. 221] By Mr. Rockwood:

Q. And you observe that paper is dated at the bottom?

A. Yes.

Q. And does that refresh your recollection as to about the time when that statement was made?

A. Not as to the date.

Q. I said as to about the time?

A. Yes.

Q. The date of that statement as you observe was October 24th, 1929?

A. I don't know if it was correct or not.

By the Court:

Q. No, but he asked you if the date of the statement was that?

A. Yes.

By Mr. Rockwood:

Q. You were discharged from the hospital on November 2nd, 1929, were you not?

A. Yes, sir.

Q. And is it not a fact that for a week prior to your discharge from the hospital you had been sleeping well?

A. Quite well at times.

Q. And is it not a fact that for the week preceding your discharge from the hospital you had been comfortable during the day?

A. Fairly.

Q. And October 24th was within a week prior to your discharge from the hospital, wasn't it?

Mr. O'Neill: Not exactly. Nine days, isn't it?

Mr. Rockwood: I withdraw the question.

Mr. O'Neill corrects my arithmetic.

Q. You had been in this same condition for some days prior to that week, too, hadn't you?

A. Not every day, no.

[fol. 222] Q. That was your general condition though during that period?

A. There were days that I felt fairly comfortable, and there were days that I was miserable.

Q. And your discomfort continued without improvement, didn't it, during the months of November and December?

A. I didn't say the comfort continued.

Q. Did it?

A. No.

Q. The discomfort, did that continue?

A. Yes.

Q. Without improvement?

A. Yes.

Q. There has been no improvement in your condition since you left the hospital, has there, at any time?

A. To what extent?

Q. Any improvement?

A. Yes.

Q. Has the improvement been recent?

A. Since I left the hospital.

Q. Yes. There has been definite improvement, has there not?

A. Yes.

Q. And you have felt stronger, have you not?

A. Yes.

Q. And you have been able to get about much better than before, at times, haven't you?

A. Why, after I came home I began moving about a little bit and got more strength back—naturally I could get about better.

Q. But you noted a distinct improvement?

A. I noticed that I got stronger.

Q. Much stronger, wasn't it?

A. Well, some stronger than I was when I came home, surely.

Q. Will you look at these two papers which I show you and state whether those are in your handwriting and signed by you, and whether you wrote them?

A. Yes.

Q. One is a letter dated November 17th, and the other a [fol. 223] letter dated December 5th; is that right?

A. Yes.

Mr. Rockwood: I offer each one in evidence.

Mr. O'Neill: Who is Mr. Gibbs?

Mr. Rockwood: That is inconsequential. I will admit on the record, if you wish to know.

Mr. O'Neill: I wish you would.

Mr. Rockwood: Mr. Gibbs is special agent of the New Haven Railroad.

Mr. O'Neill: Claim agent?

Mr. Rockwood: I now move to strike out Mr. O'Neill's thoroughly unnecessary remark.

Mr. O'Neill: It isn't unnecessary.

Mr. Rockwood: You asked me what he was, and I told you a special agent, and I meant just that. I am not under cross examination. I understand exactly the purpose of that remark.

Mr. O'Neill: I have a right to ask the witness.

Q. Who is Mr. Gibbs? Who is this Mr. Gibbs to whom these letters are addressed?

A. The claim agent.

Mr. O'Neill: Now I have no objection to the letters.

(Letter dated November 17th, 1929, received in evidence and marked Defendant's Exhibit F. Letter dated December 5th, 1929, received in evidence and marked Defendant's Exhibit G.)

[fol. 224] (Mr. Rockwood reads Exhibits F and G to the jury.)

By Mr. Rockwood:

Q. Mr. Bezue, when was it that Dr. Stivers advised you to go about your usual mode of living as much as possible, to do the ordinary things as much as possible?

A. On one of my trips to his office.

Q. Was that during the winter?

A. I really don't know.

Q. Was it before 1930 or was it after the beginning of 1930?

A. I really don't know.

Q. Was it before 1930 or was it after the beginning of 1930?

A. I really don't know.

Q. Well, you remember the incident clearly, of course?

A. I remember him telling me, yes.

Q. And you can't tell this jury within 6 months when that trip was?

A. I don't recall just when it was, no.

Q. Do you recall when, following his instructions, you first tried to drive your automobile?

A. No, I don't.

Q. Was that during the winter?

A. No.

Q. It was after the winter?

A. I don't remember.

Q. You can't tell me now whether it was in the year 1929 or 1930?

A. No, I cannot.

Q. When did you give up trying to drive your automobile? Give me the month you did that.

A. When did I give up?

Q. Yes.

A. Oh, many times.

Q. Do you still try to drive it?

A. I make an attempt at it occasionally when I feel quite well.

Q. And you do, as a matter of fact, still drive it frequently?

A. I try to drive, yes.

[fol. 225] Q. You, of course, renewed your chauffeur's license in the spring, didn't you?

A. Oh, yes.

Q. You keep that alive?

A. Yes.

Q. You said yesterday that you received diathermy at the hospital. Middletown hospital, is that?

A. Yes.

Q. You were never sent to any other institution for that, were you?

A. No, sir.

Q. I mean you are quite sure of that?

A. Dr. Stivers told me he thought he would give me diathermy treatments again, try them. He said he would let me know the next time I came up.

Q. When was that?

A. I really don't remember just when it was.

Q. You don't remember whether it was in the summer of 1930 or in the spring of 1930?

A. I don't remember just when it was, no.

Q. Or in December, 1929?

A. No, I do not.

Q. When did you have the diathermy that you did take?

A. I don't remember that. It was during my stay at the hospital.

Q. It was during the two months that you were confined to the hospital?

A. Yes.

Q. And did you have massage along with that diathermy?

A. No, sir, I was too sore to massage.

Q. And subsequent to that time, subsequent to your stay in the hospital, you never took any diathermy treatments?

A. Subsequent to my stay in the hospital?

Q. After you left the hospital?

A. No, sir, I didn't. Dr. Stivers was going to arrange for me to take treatment, and would advise me the next time I came up.

Q. You aren't taking any treatments today, are [fol. 226] you?

A. He never said anything more about it.

Q. You aren't taking any treatments today, are you?

A. None other than going to see Dr. Stivers occasionally.

Q. And Dr. Stivers has never recommended any medication to you of any kind, has he, since you left the hospital, any medicines or anything of that kind?

A. No.

Q. The only thing he has recommended to you is this diathermy, isn't that right?

A. He didn't recommend it to me.

Q. So he has recommended nothing to you for the improvement of your condition?

Mr. O'Neill: I object to that. He recommended this brace.

Mr. Rockwood: That was done in the hospital.

Mr. O'Neill: It don't make any difference. Your question didn't limit it.

The Court: Objection overruled.

(The question was read by the stenographer.)

The Witness: He hasn't recommended anything. He suggested doing things different times, but he never carried

it through. I would go up to see him and ask him about it again the next trip I made up, and he said he was going to see, he hadn't gotten to it yet.

By Mr. Rockwood:

Q. Was the improvement noted in your condition, as shown by Defendant's Exhibits F and G, continued through January?

[fol. 227] The Court: Defendant's Exhibits F and G are the two letters you wrote.

The Witness: Continued in January? I don't know. I don't know just how long the improvement—— At the time I wrote those letters I felt quite some better than I did at the time I left the hospital, because I had gotten around on my feet more and had gotten some of my strength back.

By Mr. Rockwood:

Q. That improvement continued for quite a little while, didn't it?

A. I wouldn't say it continued for quite a little while. It continued for a time. After getting out of bed I got a certain amount of my strength back. I was in bed for 8 weeks up there, and after getting out of bed I felt quite weak.

Q. Weren't you up and about in the hospital from time to time?

A. Sometimes I would be helped out in the morning and sat in a Morris chair there while the bed was being changed.

Q. Didn't you sit up, as a matter of fact, in the hospital?

A. In a wheeled chair.

Q. Yes, but in a chair, out of bed?

A. Yes.

Q. Do you remember when you first sat up after you got to the hospital?

A. No.

Q. In a wheeled chair?

A. I do not.

Q. Do you remember sitting up in a wheeled chair on September 23rd, that would be three weeks and a day after your admission to the hospital?

A. No, I do not.

Q. Would it refresh your recollection any if you looked at this paper that I show you?

A. I don't believe it would.

[fol. 228] Q. Won't you look at it (handing paper to witness)? Does that refresh your recollection any?

A. No.

Q. After looking at this paper?

A. That doesn't refresh my memory. One day was just a day there to me, that is all.

Q. You don't recall now definitely enough to state to this jury whether or not 3 weeks from the day of your accident you were sitting up at the hospital?

A. No.

Q. As a matter of fact, you were not confined in bed during your entire stay in the hospital at all, were you?

A. Not during the entire stay, no.

Q. And you were up and about on crutches in the hospital part of the time, weren't you?

A. I wouldn't say part of the time. Only for a short time before I came away.

Q. When did you start this action?

A. Maybe June.

Q. Was that before or after the diathermy treatment had been recommended to you?

A. I think that was after.

Q. Stivers recommended diathermy treatment after you had commenced this lawsuit, is that right?

A. Now you are telling me Dr. Stivers recommended it. I told you he suggested it and was going to make arrangements for me, and he never did anything more about it. In fact, he advised me to give the idea of it up when I asked him about it, because he told me that it might help and it might not.

Mr. Rockwood: I object to what he told you.

Q. Did you ever go to the Middletown Sanitarium for [fol. 229] these treatments of diathermy?

A. No, sir, he never recommended it.

Q. Well, Dr. Stivers testified that he sent you [illegible]e.

Mr. O'Neill: Objected to.

The Court: Sustained.

Mr. O'Neill: I except to the question having been asked because counsel should know it is improper.

By Mr. Rockwood:

Q. When the wheels were blocked on that sidetrack how far away from the turntable were they, just before the accident?

A. Quite a distance. I don't know exactly how far.

Q. The length of this room?

A. I don't believe as far as that.

Q. Half the distance?

A. Possibly.

Q. How far were they from the roundhouse?

A. From the roundhouse?

Q. How far were the wheels from the roundhouse when they were blocked just before the accident?

A. Very near it—I don't know exactly how far they were from it.

Q. Well, I know, but you can tell me approximately, can't you?

A. No.

Q. Can you tell me within a range of 10 or 15 or 20 feet, something like that?

A. No. As I recall it that engine wasn't all the way in the roundhouse. It was standing partly out.

Q. Do you know the distance from where the engine stood to the turntable?

A. No, sir.

Q. Approximately?

A. No, sir.

Q. Would that be a distance of the length of this room?

A. It may be. I am not sure.

[fol. 230] Q. What is your best judgment?

A. A little less.

By the Court:

Q. Is that from the rear of the engine?

A. Yes, sir.

By Mr. Rockwood:

Q. It would be a little less than the length of this room to the turntable. Now, the wheels were about half the dis-

tance of this room from the turntable then, is that what you said a moment ago?

A. I told you I didn't know exactly how far they were or about the distance.

Q. Well, would you say that the wheels were at least 5 feet from the engine when they stood blocked?

A. Maybe 4 or 5, I don't know. I don't know exactly how far, that is, as to measurements.

Q. When they started to roll backward were all 5 men pushing on them?

A. They were there. I couldn't say that they were pushing on them.

Q. The man next to you, you told me, was the Italian whom I identified as Pozzo?

A. Yes.

Q. He went under, did he?

A. Yes, sir.

Q. By putting his hands on the journal and sliding under?

A. I don't recall him going under that way.

Q. As a matter of fact, the journal is 3 feet from the ground at least, isn't it?

A. About.

Q. The lower side of the journal and the width between the wheels is fifty—what?—four inches?

A. I don't know.

Q. 56 inches?

A. I don't know.

Q. It is very close to 5 feet, isn't it, between the rails?

A. I don't think so. Is it?

[fol. 231] Q. Did you make any attempt to duck under that journal, Mr. Bezue?

A. No, sir, I did not, for the reason that that man was already down under there.

Mr. Rockwood: I move to strike out the reason.

The Court: Motion granted.

Mr. O'Neill: Exception.

By Mr. Rockwood:

Q. After you were hurt, you testified yesterday, you went and sat on some can nearby, is that right?

A. Yes, sir. I was helped to the can, can or box. I don't know just exactly. Something was there that I sat on.

Q. And that Morris helped you over there?
A. Yes, sir.
Q. Did Hessburger come over to you?
A. No, sir, not that I recall.
Q. Did any of the other men that were in this gang of 6 come over toward you as you sat there?
A. No, sir. I think—I don't know. Maybe some one did come near—I don't remember.
Q. You didn't testify to any of them coming over yesterday, did you?

Mr. O'Neill: Coming over where, Mr. Rockwood?
The Court: Anybody coming over to this box or can he was sitting on, I assume.
Mr. O'Neill: He said he was helped over, so they had to come over.

By Mr. Rockwood:

Q. By Morris. I asked if anybody else came over.
A. I think someone else was there.
[fol. 232] Q. How many times did you receive the diathermy at the hospital?
A. Not very often.
Q. Once—twice?
A. I think twice, possibly three times, that is all; and Dr. Stivers ordered it stopped.

(A recess was here taken to 1:30 P. M.)

After Recess

Redirect examination.

By Mr. O'Neill:

Q. Now, some question was asked you here today with reference to Dr. Stivers speaking to you about diathermy or electrical treatment. Now, in connection with those answers I think you said there that at one time Dr. Stivers said he was going to or was thinking of giving you further treatment that way. What did he say about it finally?

Give the details of it so we will understand it. Did he have a machine there of his own for that purpose?

A. Dr. Stivers had a diathermy machine in his office, yes.

Q. Now, even though you keep going to him does he ever give you any treatment with that?

A. No, sir, never has. The only diathermy treatment I had was at the hospital.

Q. Well, what did he say when he said he was thinking about giving it to you and still hasn't done it?

A. Well, he said he would let me know about it when I came up again, and the next time I came up I asked him if he had made arrangements for me to take the treatment anywhere, and he said no, he hadn't. I didn't bother with it any more—at least, he didn't say anything more about [fol. 233] it then. So when I came up again I asked him again if I was going to take the treatment, and he said no, he said he didn't think he would bother with it, as he felt it would be of little benefit to me to take it.

Q. And you had had it before?

A. I had it before.

Q. And it was stopped by him?

A. It was stopped because of the pain and discomfort it caused me.

Q. Now, you have been asked about sometimes you would take or remove drivers from engines. Did you at times bring drivers back to engines?

A. Yes, sir.

The Court: Aided.

By Mr. O'Neill:

Q. Aided, assisted them. And did you at times assist in taking down drivers from hot engines and bring them back in a hurry?

A. Yes, sir. There were times that those engines were needed so quickly that we were instructed to take them directly to the machine shop and wait there until the rod was finished and bring it back and put it on the hot engine—eliminate the process of cleaning the rods.

Q. Put it on the hot engine?

A. Yes, sir.

Q. And you have seen those hot road engines go out of the yard?

A. Yes, sir.

Q. Now, you talked about cleaning rods. You say sometimes they wouldn't wait to take time to clean the rods. Where would they clean these driving rods?

A. Why, they had a heated vat for that purpose just in [fol. 234] back of the machine shop. We would take them out there and soak them in the vat, dip them down in it, and that would loosen, soften the grease up, and we would wash them off with a broom.

By the Court:

Q. That was hot water?

A. Yes.

By Mr. O'Neill:

Q. I think he mentioned something else.

A. There was lye in the vat.

Q. To cut the grease off?

A. Yes, sir.

Q. And sometimes they wouldn't wait for that while they were fixing these drivers?

A. Sometimes they instructed us just to take the rod in the machine shop and have it done as quickly as possible and wait there for it and bring it right back.

Q. So on that job you assisted with your little truck so as to hurry that job of getting out the engine quickly?

A. Yes, sir.

Q. While it was hot and waiting for service?

A. Yes, sir.

Q. Now, this particular engine that you were working on at the time, I think you said it was in, as you understood it, for a boiler wash?

A. Yes, sir.

Q. Now, of course, the water was then out of it?

A. Yes, sir.

Q. But the coal? The coal was still in it?

A. The coal was still in the——

Q. In the tender?

A. In the tender.

Q. In the tender attached to it. Now, just one other matter. You have been asked here about your attempts [fol. 235] to drive your automobile. You have, as you told the lawyer here, attempted to drive it?

A. Yes, sir, under the doctor's directions.

Q. And with the painful conditions that you have described?

A. Yes, sir.

Q. When you did attempt to drive it who was with you?

A. Usually my wife.

Q. And how far would you drive it or attempt to drive it?

A. Well, I couldn't say just how far, but I never drove it very much—I never took any lengthy trip or anything like that.

Q. Well, how long, a mile or two, or what?

A. Possibly a mile and a half, two miles sometimes, that is all; because the position of sitting there, and that necessitated working the brakes, or something like that, why, that shortened the drive, because using my feet on those pedals intensed the pain.

Q. You usually sit on a rubber cushion?

A. On this cushion that I have here.

Q. On a rubber cushion inflated with air?

A. Yes, sir.

Mr. O'Neill: I think perhaps for the record we had better just describe this man's limp. I am willing to take counsel's or your Honor's description of it. Will you stand up there? Of course, we have all seen you walk in your usual way that you have to walk now, but we want the record to have some description of the limp or walk you have.

The Court: Well, he can tell how he walks. How else are you going to put it on the record?

[fol. 236] Mr. O'Neill: Well, I could describe it, but I am his counsel and I don't want to describe it in my language. But I will take their description of it, if it is a fair description.

The Court: Well, let him tell how he walks.

Mr. O'Neill: Let him walk, and then let's see if we can agree on a description. The record is entitled to show a description of the limp so as to show how serious it is.

The Court: The only way I will let it go in is to have some witness describe it.

Mr. O'Neill: Yes, unless we could agree upon a description of it.

Mr. O'Neill: Stand up there and walk.

Mr. Rockwood: Your Honor will note my exception.

The Court: Yes.

(The witness walks from the witness stand to the side of the courtroom.)

By Mr. O'Neill:

Q. In turning do you hold onto anything with your left hand whenever you can?

Mr. Rockwood: That is objected to as entirely improper.
The Court: Overruled.
Mr. Rockwood: Exception.

The Witness: I am very uncertain of my balance. When I turn I have to turn carefully so as not to twist myself.

Mr. Rockwood: I move to strike it out as not responsive.
[fol. 237] The Court: Motion denied.
Mr. Rockwood: Exception.

By Mr. O'Neill:

Q. And are you uncertain of your balance even when you turn?
A. Yes, sir.
Q. So when you come nearby some object you usually grasp it with your left hand?
A. To support myself, yes, sir.
Q. And you use a cane in your right hand?
A. Yes, sir, it is impossible to walk without it.
Q. Now, walk away from any object and just use your cane, and we will see if we can agree upon a description.

(Witness walks back to witness stand.)

Q. Do you walk so that you first move your right foot forward, holding onto a cane and balancing yourself, and then moving the left foot up to where the right foot is before starting the right foot again?

Mr. Rockwood: I think, if your Honor please, I will object to that question. I think your Honor's suggestion is very much the better one, that if there is to be any description put into the record in words of this exhibition I think it should be done by the plaintiff himself, and not by counsel.

Mr. O'Neill: Well, I will take your statement of it; that is fair enough.

The Court: I suppose I will have to sustain the objection, simply on the grounds it is leading.

[fol. 238] By Mr. O'Neill:

Q. Well, describe in your own way how you have to use your feet, how you move one, and so on, and the other, and how you use your cane in walking.

A. Well, I use my cane to support my weight when I am moving my left foot forward.

Q. And you move that how?

A. Swing this right foot ahead to get it in position, and brace myself on that cane while I——

Q. —move the left foot up to the right foot. Is that right?

A. Yes.

Q. And then you continue that process by again moving your right foot forward?

A. Yes, sir.

Recross-examination:

By Mr. Rockwood:

Q. In order that the record may be clear: In moving these drivers that you referred to you didn't use your truck at all, did you?

A. No, sir.

Q. And that moving of those drivers you had done on a number of occasions without using your truck, hadn't you?

A. A few occasions.

Q. Both with hot and cold engines?

Mr. O'Neill: You mean driving rods. He isn't talking about the same thing as you are.

By Mr. Rockwood:

Q. I said drivers, Mr. Bezue.

The Court: And by that you mean driving wheels.

Mr. O'Neill: But he didn't understand that. All right; go ahead.

[fol. 239] By Mr. Rockwood:

Q. You had moved drivers taken from hot engines, you said, did you not?

A. I don't recall saying it.

Q. Then that is not the fact?

A. I said I had helped to move drivers on different occasions.

Q. Were they taken from hot engines?

A. I really don't know where they were taken from.

Mr. O'Neill: He doesn't understand. We were talking about drive rods.

Mr. Rockwood: I will ask your help some other time, Mr. O'Neill, but not now.

By Mr. Rockwood:

Q. Have you ever removed or assisted in the removal of drive wheels from a hot engine?

A. No.

Q. You cannot remove drive wheels from a hot engine, can you?

A. I don't know.

Redirect examination.

By Mr. O'Neill:

Q. When you talked about moving drivers before, the question as specifically stated was driving rods, and you said you had to sometimes get them back in time directly instead of taking them to the lye pit?

A. Yes, sir, that was driving rods.

Q. Yes. That had nothing to do with driving wheels?

A. No, sir.

Q. You didn't say anything about that?

A. No, sir.

Mr. O'Neill: Now, if your Honor please, from the de- [fol. 240] fendant's examination before trial, through its officers, which was partly completed when the defendant appealed—for your Honor's information, or perhaps I think the record may disclose what your Honor may know about this: subsequent to such examination as we will read here the defendant appealed from the order for the examination.

The Court: I don't think that is of any interest to the jury.

Mr. Brumley: Now, I want to get the record straight here, that we did not appeal from the entire order, only part of it.

Mr. O'Neill: That is correct. All I am trying to get at is this, and it can't possibly hurt anybody, just the fact, and that is that the plaintiff then proceeded to trial and uses a subpœna duces tecum which we are going to call for a compliance with instead of delaying the trial by pending the appeal. That is all I am going to say about it.

The Court: That they have a right to know.

Mr. O'Neill: That they have a right to know.

Now, we will read the testimony of the defendant's employee, Raymond Quick, upon this examination of the defendant through its employees before trial, and it starts at folio 183 of the defendant-appellant's printed papers on appeal. The parts which I don't read, of course, they have a right to read.

[fol. 241] "RAYMOND QUICK, a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. Where do you live?

A. Montgomery, N. Y.

Q. And you were employed by the New York, New Haven and Hartford Railroad Company, on the 2nd day of September, 1929?

A. Yes, sir.

Q. How long previous to that had you been employed at Maybrook?

A. Six years.

Q. And, did you inspect engine 3221, at Maybrook?

A. Made a part inspection, yes.

Q. Previous to the nd day of September, 1929?

A. Yes, sir.

Q. When?

A. I don't know, the 23rd or 24th.

Q. Have you a record that will show when?

A. Yes, sir.

Q. Will you look at that record, and tell me when?

A. It's right here.

Q. (Handing papers.)
A. (Looking.) The 24th
Q. And when did you inspect it again?
A. Different dates, days following that date; the days I can't recall.
Q. Have you any record that will show the days you inspected it?
A. No, I haven't.
Q. Have you any record that will show the last time you inspected it before September 4th, 1929?
A. No, I haven't.
Q. Is there any record that will show either of those dates, to your knowledge?
A. Yes, sir.
Q. Where is that record?
A. The boiler wash certificate.
Q. I am talking now, of between the 23rd day of August, [fol. 242] 1929, and the 4th day of September, 1929?
A. September 4, 1929.
Q. That is the only day that you inspected it after the first inspection, whatever day that was?
A. No.
Q. Have you any records that will show the other days that you inspected it?
A. No, I haven't.
Q. No such record is kept?
A. No, sir.
Q. Were you present at the time of the accident?
A. No, sir."

Mr. O'Neill: I am leaving out the question put to Mr. Hessberger by Lewis.

Mr. O'Neill (continuing reading):

"Q. Mr. Quick, did anyone else inspect that engine, to your personal knowledge?
A. Yes, sir.
Q. Between the 23rd day of August, 1929, and the 4th day of September, 1929?
A. Yes, sir.
Q. Who?
A. The boiler inspector.

Q. What is his name?
A. Cleon I. Cassedy.
Q. Who else?
A. George Cooke.
Q. What was he?
A. He's the same as I am, mechanical inspector. And, Harry Keelor.
Q. Are there any records, to your knowledge, as to when these various men, Cassedy, Keelor and the other man, Cooke, made their inspections?
A. No, sir.
Q. Or how often they made their inspections?
A. No, sir.
Q. Do you know, of your own personal knowledge, whether or not at all the times between the 23rd day of August, 1929, and the 4th day of September, 1929, this engine [fol. 243] was in the Maybrook yards, that there was somebody working continuously on the said engine?
A. No, sir. I do not.
Q. Do you know, of your own knowledge, whether or not on jobs such as were done on that engine, it is customary to work continuously?
A. No, sir, I do not.
Q. Well, from your experience, do they work continuously?
A. I don't recall it.
Q. They do a certain part, and then there is a lapse of time and do something else, is that right?
A. Yes, it has been kind of slack.
Q. That is the general way of doing the job?
A. Yes.
Q. Do you know anything about the traffic that this engine was engaged in previous to the accident?
A. No, sir.
Q. Or after the accident?
A. No, sir.
Q. Did you have anything to do with supervising the movement of these wheels on the day of the accident?
A. No, sir.
Q. Do you know anything about the general duties that Mr. Bezue performed?
A. No, sir.

Q. In your duties as an inspector you made inspections of engines in various parts of the Maybrook yard, did you not?

A. The engine house terminal, the round-house.

Q. Is that the only place in Maybrook where inspections of engines are made?

A. Yes, sir.

Q. No inspections are made on the main line?

A. No, sir.

Q. No repairs are made, to your knowledge, on the main line?

A. No, sir.

Q. All repairs and inspections are made in the engine house terminal, is that what you call it?

A. Yes, terminal.

[fol. 244] Q. And that engine house terminal includes the round-house and the turn-table?

A. Yes, sir.

Q. And the rubberneck track?

A. Yes, sir.

Q. Any other tracks or any other places?

A. The blacksmith shop, the Whiting hoist building, the small carpenter shop."

Mr. O'Neill: I am leaving out the next question and answer.

Mr. O'Neill (continuing reading):

"Q. Oiling and greasing jobs are done in the engine terminal?

A. Yes, sir.

Q. And they are done in the round-house?

A. Yes, sir.

Q. And they are done on live engines?

A. Yes, sir."

Mr. O'Neill: I will omit the next question. That was objected to.

Mr. O'Neill (continuing reading):

"Q. Their greasing and oiling jobs are done on engines at this round-house that come in from a run and are stabled there for a few hours, or, waiting their next turn to go out?

A. Yes, sir.

Q. There generally while they are waiting?

A. Yes, sir.

Q. And did you make inspections on engines of that character?

A. Only the boiler wash.

Q. And you make inspections for boiler washes on engines of that character?

A. Yes, sir.

Q. And that is a regular inspection that is made periodically, isn't it?

A. Yes, sir.

Q. How often is that inspection made?

A. Every 30 days.

[fol. 245] Q. It is compulsory to make them at that time?

A. Yes, sir.

Q. Now, of your own knowledge, on these various engines, boiler inspections are made upon, how long does it take to make the inspection and the work of cleaning the boiler in accordance with the necessary requirement?

A. Well, that's according to the nature of the repairs.

Q. I say, how long does it take to make the boiler inspection and the boiler wash?

A. I couldn't tell you.

Q. Have you any idea?

A. Maybe, 3 days, maybe, 6 days.

Q. And at no time is a boiler wash made alone?

A. No, sir.

Q. You used that time to make minor repairs?

A. Yes, sir.

Q. And temporary repairs?

A. Yes, sir.

Q. And running repairs?

A. Yes, sir.

Q. And those repairs are made on every engine that comes in for a boiler wash?

A. Yes, sir.

Q. As the case may require?

A. Yes, sir.

Q. And that is the only time that running repairs and temporary repairs are made at Maybrook?

A. No, sir.

Q. They are made at other times?

A. Daily.

Q. And the engine house is the only place where these temporary and running repairs are made?

A. Yes, sir.

Q. Do you know how many boiler washes had been made on this engine from the time it last came from Reedville until the 23rd day of August, 1929?

A. No, sir.

Q. Would you make all those inspections of boiler washes?

A. If I was there.

[fol. 246] Q. There are records kept of the number of boiler washes made?

A. Yes, sir.

Q. And are there records, also, containing the running repairs and temporary repairs made at the time of the various boiler washes?

A. Yes, sir.

Q. Whenever engines of the type of 3221 were to be completely dismantled, they were taken to Reedville?

A. Yes, sir.

Q. And no complete dismantlings were made at Maybrook?

A. No, sir.

Q. I show you Plaintiff's Exhibit 'A,' and ask you whether or not that is a list of the various parts of an engine that are inspected at the time of the boiler wash?

A. Yes, sir.

Q. And that is done on every engine?

A. Every boiler wash.

Q. On every engine?

A. On every engine on the boiler wash period.

Q. Every 30 days?

A. Yes.

Q. And whenever a general repair job is to be done, the engine of this particular type is sent to Reedville, Mass.?

A. Yes, sir."

Mr. O'Neill: Now, we have one other witness that wants to be through this afternoon.

Mr. Brumley: What about the cross examination of Quick?

Mr. O'Neill: It was reserved.

Mr. Brumley: It was reserved until now.

Mr. O'Neill: Well, now, your Honor, we want to get rid of this witness Kiernan today.

Mr. Brumley: But, your Honor, isn't that mixing things up?

[fol. 247] Mr. O'Neill: This examination will only take a little while, and let's get through with him.

The Court: Well, you will agree then that after Mr. Kiernan is called he may put this witness Quick on the stand and cross examine him?

Mr. O'Neill: If the law permits it. I don't object as a matter of order. I say that the law doesn't permit it. Their reservation amounts to nothing—that is our contention.

The Court: Well, I will hold it until you examine this witness Kiernan, and then I will take up this examination before trial. And I will be perfectly frank with you that my experience and my recollection is that on an examination before trial there is no cross examination—but have you any authority?

Mr. Brumley: Well, that is an interesting question that we will discuss later.

JOHN KIERNAN, a witness for the plaintiff, being called and sworn, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. Where do you live, Mr. Kiernan?

A. 558 Tenth Avenue, New York City.

Q. Now, on the date of this accident, September 2nd, 1929, you were in the employ of this New Haven Railroad at this roundhouse at Maybrook, were you not?

A. Yes, sir.

[fol. 248] Q. And were you there at the time the wheels came back and this man was hurt?

A. Yes, sir.

Q. Did you see who knocked out the block?

A. Yes, sir.

Q. And who kicked it out?

A. Mr. Hessberger.

Q. Before he kicked it out was there any warning of any kind at all that he intended to do it?

A. No, sir.

Q. He just kicked it out without any warning?

A. Yes, sir.

Q. And instantly, as soon as he kicked it out, what did the wheels start to do?

Mr. Rockwood: I object to the form of the question, the characterization "instantly."

The Court: Well, I will strike out the "instantly," and I will let the rest of the question stand.

By Mr. O'Neill:

Q. Well, what happened when he kicked the block out?

A. Well, the counterbalance being toward the back, the wheels naturally rolled back towards the tender of the engine.

Q. And what did you and Bezue and the other men do?

A. Well, I jumped aside, I ducked aside to the right.

Q. Where was Bezue?

A. Bezue was to my right, but on the other side of the Italian fellow. The Italian boy jumped under and Bezue over.

Q. You all tried to escape in various ways?

A. Yes, sir.

By the Court:

Q. Were you outside the wheels?

A. Yes, sir.

[fol. 249] Q. And the Italian and Bezue were between the wheels?

A. Yes, sir.

By Mr. O'Neill:

Q. But the Italian was nearer to this axle, and he is a smaller man, too, isn't he?

A. Yes.

Q. And he got under?

A. And he got under.

Q. Then what did Bezue do in trying to escape, as far as you saw?

A. As far as I saw, he jumped over the top.

Q. He tried to get over the top?

A. He tried to get over the top.

Q. You were getting away yourself at this time?

A. Yes.

Q. And then what happened?

A. Why, he got over the top, and the impact, I believe, jarred him—I don't know whether it did or not.

Mr. Rockwood: I move to strike out what the witness believes.

The Court. Motion denied.

Mr. Rockwood: Exception.

By Mr. O'Neill:

Q. Well, there was an impact?

A. There was an impact.

Q. And immediately after that he fell, did he?

A. Bezue fell.

Mr. Rockwood: I object to counsel leading constantly.

The Court: Well, I will sustain the objection on the ground that it is leading.

By Mr. O'Neill:

Q. Well, what happened at the time, or immediately after [fol. 250] the impact?

A. Bezue fell to the ground.

Q. And then what happened to him then? What was done about him?

A. Why, he was picked up, brought back, and sat on a box or a can, I don't recall which, on the side of the tender.

Q. Now, you have been subpœnaed here by the railroad company as a witness to attend this court, haven't you?

A. Yes, sir.

Q. Upon one or more occasions?

A. One.

Q. One occasion.

By the Court:

Q. Are you still in their employ?

A. No, sir.

By Mr. O'Neill:

Q. And did you afterwards receive word that you need not be present?

A. Yes, sir.

Q. That after that we subpœnaed you?

A. Yes, sir.

Cross-examination.

By Mr. Rockwood:

Q. How long were you employed by the railroad?

A. About 4 months.

Q. When did you get out of the employ of the railroad?

A. In October.

Q. 1929?

A. '29.

Q. You were employed as a laborer around there, too?

A. I was employed as Bezue's helper, and after that as a motor truck operator.

Q. After September 2nd you became a motor truck operator?

A. Yes.

Q. And you left them in October?

A. Yes, sir.

Q. Left the employ of the railroad entirely?

A. Left the employ of the railroad entirely.

[fol. 251] Q. And you were subpœnaed to come to this court by the railroad last week, weren't you?

A. Yes, sir.

Q. And then you subsequently came down to the office of the attorneys for the New Haven Railroad in New York City to see them, didn't you?

A. The day I was subpœnaed, yes, sir.

Q. That was last week?

A. Yes.

Q. Early in the morning?

A. I went with your representative.

Q. In the forenoon?

A. In the forenoon, around noon, I believe it was.

Q. Yes. And you had a talk with some men down there, didn't you?

A. No.

Q. Didn't talk to anybody down there?
A. No.
Q. Didn't see anybody?

Mr. O'Neill: He says he went with your representative.

The Witness: With the representative.

By Mr. Rockwood:

Q. This gentleman at my right (indicating William Donahue)?
A. Yes, sir.
Q. You saw him the first time you went down there, didn't you?
A. Yes, sir.
Q. And that was September 22nd?
A. I can't recall the date.
Q. Well, what day of the week was it?
A. Monday or Tuesday, I don't know just which.
Q. And then you came down again to see him on Thursday, was it?
A. No.
Q. Did you come in the office again, of the railroad?
A. Yes.
Q. After the 22nd?
A. Yes.
[fol. 252] Q. Later that week?
A. The following day.
Q. And that was the day they told you they did not want you, wasn't it?
A. No, Thursday morning they notified my mother.
Q. When you came in the second time to the railroad you had been drinking, hadn't you?
A. Been drinking the first time also.
Q. And it was after the second time you came in, after you had been drinking, that they notified your mother they didn't want you, wasn't it?
A. It was on a Thursday.
Q. And you had been in to see them on Tuesday and Wednesday, and both occasions you had been drinking?
A. Been drinking for three weeks previous to that.
Q. Are you still drinking?
A. It isn't important.

Q. Now, you made a statement of the occurrences on the day of the accident to the superintendent, the general foreman over there, Mr. Jennings, didn't you?

A. I believe so.

Q. You remember the occasion?

A. Yes.

Q. You remember Miss O'Brien being there, was it?

A. A girl—I don't know her name.

Q. A stenographer?

A. Yes.

Q. Took down what you said, didn't she?

Mr. O'Neill: Objected to as a conclusion. She took down something.

By Mr. Rockwood:

Q. And she wrote it out on a paper?

A. Yes.

Mr. O'Neill: I move to strike it out.

The Court: Well, the motion is denied.

Mr. O'Neill: Exception.

[fol. 253] By Mr. Rockwood:

Q. And gave it to you to sign, didn't she?

A. Yes.

Q. And you signed it, didn't you?

A. I believe so.

Q. And is that the paper that you signed (showing witness)?

Mr. O'Neill: What is the date, Mr. Rockwood?

Mr. Rockwood: September 26th, isn't it, Mr. Kiernan?

The Witness: September 26th is right.

By Mr. Rockwood:

Q. And that is your signature, isn't it?

A. That is my signature.

Q. And you signed that paper?

A. I signed that paper.

Q. Yes. And when you made this statement you told the truth, didn't you?

A. I believe so—not all of it.

Q. You tried to, didn't you?
A. Part of it.
Q. And the rest of it you lied about, did you?

Mr. O'Neill: I object to it. That don't follow.

The Witness: No; the rest I didn't tell.

By Mr. Rockwood:

Q. But whatever you did set down in this paper is the truth, isn't it?
A. As far as I know.

Mr. O'Neill: Objected to. He has been given no oppor-
[fol. 254] tunity to read it since he has been on the stand.
The Court: He hasn't been asked whether he read it.
Mr. O'Neill: No. So the question is therefore improper in form.
The Court: No; he may ask the question: "Was it the truth so far as you know."

By Mr. Rockwood:

Q. Did you read this paper before you signed it?
A. No, I don't know whether I did or not.
Q. But you knew what you were signing, didn't you?
A. I think so.
Q. And you knew you wouldn't sign your name to any lie, didn't you.

Mr. O'Neill: Objected to in that form.
The Court: Objection overruled.
Mr. O'Neill: Exception.

(The question was read by the stenographer.)

The Witness: I don't believe I did.

By Mr. Rockwood:

Q. And were you asked to tell in your own words what happened, as near as you could remember, on September 2nd when Bezue was hurt?
A. Yes I was.
Q. And did you make this statement and was it the truth?
A. I don't know what is in the statement.

Q. I am going to tell you. "I was facing the turntable when I heard you holler 'Look out.'" The statement was [fol. 255] taken by Mr. Jennings wasn't it?

A. Yes.

Q. And when you used the word "You" you meant Mr. Jennings?

A. I was talking to Mr. Jennings, yes.

Q. I will read it again. "I was facing the turntable when I heard you holler 'Look out.' Then I saw the wheels go back and Bezue swing over the top of the wheel and Poto under." That is right isn't it?

A. That is right.

Q. "Close as I could see he sat on journal and journal struck draw-head of tender of engine 3210 and jarred him off he falling backwards." Is that right?

A. Right.

Q. "Striking the ground. I assisted in picking him up and he worked for a while. After that had lunch hour." Is that right?

A. That is right.

Q. "He laid down and complained of not being able to get up. So I drove him to Dr. Stevens' office." Is that right?

A. Perfectly right.

Q. "In Walden, and there they called ambulance and sent him to Memorial Hospital, Middletown, New York."

A. That is right.

Q. You remember this being asked you: "Question. Did you see anyone take a block out from under wheels?" You remember that being asked?

A. Yes.

Q. "Answer. No." Do you remember making that statement?

A. I don't know if I do or not.

Q. If you made it then was it true?

A. If I made it it must have been.

Q. This is the Mr. Jennings that you referred to in that statement (indicating man standing in court room)?

A. Yes.

Q. On the 22nd day of September, 1930, did you talk with [fol. 256] Mr. Donahue, this gentleman on my right?

A. Yes, sir, if that is the date that I went to the office.

Q. Did you at that time make a statement to him?
A. Yes, sir.
Q. Did he write it down?
A. I believe he did.

The Court: Did who write it down?

By Mr. Rockwood:

Q. Did Mr. Donahue write it down?
A. Yes, sir.
Q. In your presence?
A. Yes, sir.
Q. Did you read it over?
A. No, sir.
Q. You didn't read it over at all after he wrote it? Are you sure of that?
A. Positive.
Q. And what you told him was true on that day?
A. I believe so.
Q. Tried to tell the truth?
A. Well, I was too drunk to know whether I was telling the truth or not.
Q. You were so drunk you didn't know what you were doing; is that right?
A. Yes.
Q. Where was this statement given; where were you at?
A. Up in the office.
Q. What office?
A. New Haven and Hartford Railroad.
Q. Anybody else there besides Mr. Donahue?
A. Not when the statement was given, I don't believe. There was people coming in and out.
Q. Did you talk to anybody outside of Mr. Donahue?
A. No, sir.
Q. On that occasion you were too drunk to know what you were doing?
A. Well, he knew—he seen me drinking a pint of whiskey. He ought to know whether I was drunk or sober.
[fol. 257] Q. Didn't you give him any of it?
A. No, he gave it to me.
Q. He gave you a pint of whiskey?
A. Bought me a pint.

Q. Bought you a pint of whiskey. That day?
A. Yes.
Q. And watched you drink that pint?
A. He didn't watch me drink it all, no.
Q. And that pint of whiskey made you so drunk you didn't know what you were doing?
A. I was drunk before that.
Q. And then you added a pint of whiskey to the drink before that, huh; is that right?
A. Yes.
Q. And you were still able to walk?
A. Yes.
Q. Good boy. Now, will you look at this paper that I show you and state whether or not that is your signature (showing witness)?
A. It looks like mine.
Q. Well, now, read the words just above that signature, please, Mr. Kiernan?
A. "I have read the above and it is true."
Q. Whose handwriting is that in?
A. It resembles mine.
Q. Pretty good handwriting for a drunken man, isn't it?
A. No, I don't think so.

Mr. O'Neill: I object to that.
The Court: Overruled.
Mr. O'Neill: Exception. There is no standard of writing of drunken men.
Mr. Rockwood: No standard of drunkenness either.
Mr. O'Neill: No.
Mr. Rockwood: That is all.
Mr. O'Neill: Now I would like to see both statements [fol. 258] which have been shown the witness and about which they have interrogated him.

(Mr. Rockwood hands papers to Mr. O'Neill.)

Redirect examination.

By Mr. O'Neill:

Q. Did you tell Mr. Donahue, that is the man whom you say gave you a pint of whiskey, that you waited for about 5 minutes for the turntable to be lined up, and when it was,

Jake Hessburger kicked the chock with his foot. "We did not expect him to do it." Did you tell him that?

A. Yes.

Q. And it was after that he told you, sent word to you you didn't need to come to court?

A. Yes.

Mr. O'Neill: I ask that it be marked for identification.

Mr. Rockwood: I consent that it go right in evidence, the whole business, both of them.

Mr. O'Neill: The whole business is not competent, and therefore we object.

The Court: Well, nobody has offered it in evidence yet. He is simply asking to have it marked for identification.

(Statement of September 22nd, 1930, marked "Plaintiff's Exhibit 12 for identification.")

By Mr. O'Neill:

Q. Now, the gentleman who bought you the pint of [fol. 259] whiskey is sitting at the end of the table, now, assisting Mr. Rockwood, the defendant's counsel, while you were being cross examined?

A. Yes.

Mr. Rockwood: Please mark this statement.

(Statement of September 26th, 1929, marked Defendant's Exhibit H for Identification.)

Recross-examination.

By Mr. Rockwood:

Q. You were asked by Mr. O'Neill whether you made this statement that you saw Jake Hessburger kick this chock out from under the wheel. Let me ask you this: Did you see the chock put under that wheel?

A. Yes, sir.

Q. When you put a chock under that wheel the gang held it while somebody put the chock under didn't they?

A. No.

Q. Who put the chock under?

A. Jake Hessberger.

Q. Jake Hessberger. While the rest of you men in the gang held the wheel?

A. Yes.

Q. And then you let the wheel settle onto that chock; isn't that right?

A. Yes.

Q. And that was what occurred on this day, wasn't it?

A. Yes, sir.

Q. Now, you say you saw Jake Hessberger kick the chock out?

A. Yes, sir.

Q. With his foot?

A. Yes, sir.

Q. He didn't pull it out with his hand?

A. No, sir.

Q. He just gave it one kick and the chock came out?

A. Yes, sir.

[fol. 260] Q. And as soon as the chock came out the wheels moved toward the roundhouse?

A. Right.

Q. Started to move immediately?

A. Yes, sir.

Q. So that the counterbalance, you said earlier in your testimony, was on the side toward the roundhouse?

A. Yes, sir.

Q. And, of course, the weight of that counterbalance was against the chock, wasn't it?

A. Yes, sir.

Redirect examination.

By Mr. O'Neill:

Q. You know Mr. Hessberger, he has been there for quite a while?

A. Yes.

Q. Without criticizing his physical condition, but as proving it as affecting this case, do you know whether he is a one-eyed man?

A. Yes, sir.

Q. He is a man with one eye?

A. Yes, sir.

Recross-examination.

By Mr. Rockwood:

Q. Mr. Hessberger has got two hands?

A. I believe so.

Q. Two feet?
A. I believe so.
Q. And a back?
A. I think so.

Mr. O'Neill: Now, this question comes up as to the cross-examination of the witness Quick. Where is their learned counsel with these legal questions?

The Court: I will be perfectly frank with you, gentlemen, that my experience—and I haven't looked it up especially—on these examinations before trial is that they are simply an examination by the plaintiff, and the practice is [fol. 261] not to allow cross examination. Have you any authority to the contrary?

Mr. Brumley: No; but I want to call this to Your Honor's attention, that there was a stipulation entered into that the defendant may reserve cross-examination of such witnesses as it deems desirable until the time of trial. Now, having entered into that stipulation, it seems to me they should not withdraw from the stipulation.

Mr. O'Neill: We are not withdrawing from it. All we say is that legally—The law is well settled, just as Your Honor remembers it. If they say their cross-examination is reserved they are only doing just what the law says they must do, that they have no right to cross-examine them before trial.

Mr. Brumley: But we can enter into a stipulation giving us a right to cross examine orally at the time of trial. There is an agreement, a perfectly valid agreement.

The Court: Well, of course, the agreement as it appears is simply in parenthesis after the examination, which says "Cross-examination reserved as heretofore noted."

Mr. Brumley: Well, I call Your Honor's attention to page 27, which is the stipulation, folio 79; that the defendant may reserve cross-examination of such witnesses as it deems advisable until the time of trial. Now, if it means anything it means that we have this very right that Mr. O'Neill now seeks to deny us, seeks to withdraw from the stipulation that he entered into, seeks to break this own [fol. 262] agreement made by Mr. Lewis who conducted the examination on his behalf.

Mr. O'Neill: You can't reserve a right which you haven't got.

Mr. Brumley: Well, we can be given the right of reservation by the other side.

The Court: Well, gentlemen, I am ready to rule.

Mr. O'Neill: All right.

The Court: The witness is here and may be put upon the stand, and you claim the right under the law and under this stipulation to cross-examine him so it shall enter as part of the plaintiff's case. In my opinion you have not that right, so I will deny your request and grant you an exception. Now, if before the plaintiff's case is finished you find any authority I will be glad to reverse myself; but in my opinion on an examination before trial the defendant has no right to cross-examine, and in my opinion this statement here is not sufficient to give you a right which you do not have under the law. And I give you an exception so you may be protected against my ruling.

Mr. Brumley: Yes, Your Honor, I would like to have an exception on that. And before Mr. O'Neill proceeds further I would like to offer in evidence what is called Plaintiff's Exhibit 8. Reference to that appears on page 67 of the record. It was shown to Quick. It really is, I think it will be agreed, Defendant's Exhibit A. Is that right?

[fol. 263] Mr. O'Neill: It is a defendant's exhibit, and that is why it don't belong in this case at this time.

Mr. Brumley: The witness was shown that exhibit. I think it properly should go in at this time, and I offer it.

Mr. O'Neill: When I was reading that I read that line because I understood from that that there was some exhibit of the plaintiff's in evidence. Now if that is a mistake and it is a defendant's exhibit, why, I withdraw that question and answer from the reading, and they will have to put in their own main case.

Mr. Brumley: In that same connection I call your attention to folio 156. "Mr. Lewis: I will offer, before I forget it, Defendant's Exhibit A in evidence and withdraw my objection." "(Defendant's Exhibit A of this date also marked as Exhibit A for Defendant of this date.)" Now, that is the same exhibit that Mr. Lewis offered in evidence, after I had offered it in evidence. So both sides put it in the examination before trial, and that is the exhibit that was referred to this witness.

The Court: All right. Now, assume that they had done that. They are not bound to offer in evidence any part of

this examination before trial unless they see fit to offer it. I think it is perfectly true if you offer a part of a particular witness' examination you are entitled to have it all. Now, do you claim because they asked and got an answer with relation to Exhibit A that that then makes Exhibit A [fol. 264] relevant; is that your claim?

Mr. Brumley: Yes, Your Honor.

Mr. O'Neill: Well, we withdraw that, because we were under the apprehension that it was marked Plaintiff's Exhibit A. And the only point is to keep the matter in an orderly way here. Because there is no question this Exhibit A will finally get into evidence here as a defendant's exhibit, but we say it don't just belong in our part of the case. In fact, it may come in in connection with the testimony of the very next witness whose testimony we will read; but I went along reading that because I saw that it had been marked as a plaintiff's exhibit.

The Court: I think for safety's sake, Mr. O'Neill, you having read it in, I will allow them to mark it in.

Mr. O'Neill: Well, it will go in anyway. It don't make much difference what time it goes in.

Mr. Brumley: Then I offer in evidence these 3 yellow sheets. It was agreed at the time that the white sheet on top was no part of the exhibit.

The Court: Are they the boiler washing records that was marked Exhibit A?

Mr. Brumley: Yes.

The Court: Well, is it agreed that the white sheet is not a part of it.

Mr. O'Neill: Yes.

The Court: Then the white sheet is not received in evidence then.

[fol. 265] Mr. O'Neill: No. Then he offers the 3 yellow sheets, which seem to be a mimeograph form—is that correct?

Mr. Brumley: Typed.

Mr. O'Neill: Well, we only object to it at this time in the case, not because we have any objection to this as a part of the defense. It is a natural part of the defense, and besides it will come in better when there is explanatory testimony about it.

Mr. Brumley: Well, I will take care of that.

(3 yellow sheets received in evidence and marked Defendant's Exhibit I.)

Mr. O'Neill: We will now read Mr. Jennings' testimony as given in the examination before trial, folio 181:

(Questions read by Mr. O'Neill; answers read by Mr. Lewis.)

"Raymond B. K. Jennings, a witness, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. Where do you reside?
A. Montgomery, New York.
Q. You are an employee of the New York, New Haven & Hartford Railroad Company?
A. Yes, sir.
Q. In what capacity?
A. General foreman, Maybrook engine house.
[fol. 266] Q. How long have you been employed there?
A. Six years, approximately, maybe a few months one way or the other.
Q. What are your duties?
A. My duties are general supervision over all the activities at the engine terminal.
Q. Does that include the transportation of trains, the routing of trains and routing of freight, and matters in relation to transportation?
A. No, sir; engine terminal, I didn't say general terminal.
Q. Which includes the handling of engines?
A. Right.
Q. Repairs on engines?
A. Yes, sir.
Q. And repairs on cars?
A. No, sir.
Q. And you were in that capacity on August 23, 1929?
A. Yes, sir.
Q. And you have been ever since?
A. Yes, sir.
Q. Now, can you tell us in relation to this yard at Maybrook—you have there one large round-house?

A. Ordinary size, yes, sir.

Q. Which is divided into three subdivisions?

A. Yes, sir.

Q. With tracks and pits in each of the sub-divisions?

A. Yes, sir.

Q. And how many tracks and pits in each of the sub-divisions?

A. Division No. 1, is 10; division No. 2, is 10; division No. 3, is 7.

Q. They are only divided by a brick wall?

A. Yes, sir.

Q. Out in front of this house do you have a turn-table?

A. Yes, sir.

Q. Is that the only turn-table you have in Maybrook?

A. Yes, sir.

Q. And tracks from the main line lead on to this turn-[fol. 267] table, do they not?

A. Well, not from what we consider a main line.

Q. Well, how do you get your trains from the main line, your engines from the main line on to the turn-table?

A. From the leads.

Q. You take them over tracks?

A. From leads, not the main line, we have one main line at the terminal.

Q. But you have leads from your main line to the tracks which lead to the turn-table?

A. Right.

Q. Which, in turn, leads to the engine house?

A. Yes, sir.

Q. Now, you have a rubber-neck track or truck there?

A. Yes, sir.

Q. And where is that situated in relation to the round-house?

A. Its relation is directly across from pit No. 12.

Q. Where is pit No. 12?

A. In the center section.

Q. Now, you have a machine shop there, too, haven't you?

A. Yes, sir.

Q. Where does the traffic that is handled by the New York, New Haven & Hartford Railroad Company at Maybrook come from?

A. Well, I know what roads it comes over.

Q. What does it come over?

A. The L. & H.——

Q. The Lehigh——

A. —and Hudson River Railroad.

Q. What else?

A. The Ontario & Western, the Erie, The Lehigh & New England.

Q. And it also comes over the New Haven from Connecticut?

A. Yes, sir.

Q. And all of these roads that you have spoken of run outside of the State of New York?

A. I couldn't tell you that.

[fol. 268] Q. Now, the railroad has a main repair shop at Reedville, Massachusetts?

A. Yes, sir."

Mr. Brumley: Well, I object to that and move to strike out the answer.

The Court: Objection overruled—motion denied.

Mr. Brumley: Exception.

(Reading continued:)

"Q. Well, it has a general repair plant at Reedville, Massachusetts?

A. Yes.

Q. And, do you know of your own knowledge, what engine it was that was connected with an accident to Clarence Bezue, on the 2nd day of September, 1929?

A. Yes, sir.

Q. The number of that engine?

A. Yes, sir.

Q. What?

A. Engine 3221.

Q. Were you present at the time of the accident, at the point?

A. In the vicinity, yes, sir.

Q. I asked you whether or not you were present on hand, right near?

A. I wasn't right close to the man, no, but I was right in the vicinity.

Q. How far away from the man were you?

A. Oh, I imagine, 30 feet.

Q. Where?

A. At the turntable.

Q. And, at that time, engine number 3221 was on the turntable?

A. No, sir.

Q. Where was it?

A. 332, was——

Q. That is the engine?

A. Yes, sir.

Q. Where was it?

A. I couldn't tell you, exactly, what pit it was in; the center house, but I don't know exactly what pit the engine was in.

Q. Did you see that engine brought out on the turntable that morning?

A. No, sir.

[fol. 269] Q. You were there all the time Bezue was there?

A. Yes, sir.

Q. Now, what kind of an engine was 3221; I mean by that, its type?

A. A Santa Fe type, 2-10-2.

Q. And that is a large engine?

A. Yes, sir.

Q. A freight engine?

A. Yes, sir.

Q. And, I don't suppose you know anything about every run that this engine had made from the time that the railroad company first obtained it until the date of the accident and since?

A. No, sir.

Q. Do you know who might know that?

A. Who might know every run?

Q. Yes.

A. Well, you could check up by the record, that would be the only way it could be obtained, of my knowledge.

Q. Do you know whether or not there are records that would check it up?

A. For a certain period of time.

Q. How long a period, do you suppose?

A. I imagine, for five years back, the records would be available.

Q. Now, previous to this accident, do you know, of your own personal knowledge, whether or not this engine had ever been used in passenger traffic?

A. Not to my knowledge.

Q. And, previous to the accident, do you know when the last time it was that this engine was taken to Reedville, or was at Reedville for overhauling?

A. I couldn't tell you now without checking it up.

Q. Did you bring any records along that you thought would tell that?

A. No, that would tell me when last shipped.

[fol. 270] Q. There are such records?

A. Yes, sir.

Q. Now, under the State law of the State of New York, all engines operating in New York, have to undergo a boiler wash at certain intervals, do they not?

Mr. O'Neill: Then there is an objection.

The Court: Well, the objection is overruled.

(Reading continued:)

"The Witness: Yes, not a State law, it's a Federal law.

Q. There is a Federal law to that effect, to your knowledge?

A. Yes, sir.

Q. You aren't so sure about a State law?

A. No.

Q. How often do you wash these boilers in Maybrook, on the engines of this type?

A. Every 30 days.

Q. And how long does that take?

A. Different times.

Q. For the boiler wash alone, I mean?

A. We never consider it as a boiler wash alone.

Q. That is, every time you have a boiler wash, you do other things on the engine?

A. We take care of the 30 days' inspection at that time, yes, sir.

Q. Now, do you know, of your own knowledge, what this particular engine, 3221—on what run that particular engine was previous to the accident, for as for back as you can go?"

Mr. Rockwood: That is objected to as to form.

[fol. 271] Mr. O'Neill: Well, it wasn't answered.

(Reading continued:)

"Q. Well, for a month back?

A. We have records to show that.

Q. Did you bring those records to show that?

A. I have them for two weeks.

Q. Two weeks previous?

A. Yes, sir.

Q. Will you tell me what the records show for two weeks previous?

A. I will answer that by looking at the records.

Q. Yes, sir, what is the record?

A. The report, to show the time of arrival and departure of all engines and engine crews despatched to and from this engine terminal covering any service except such as are assigned to switch service.

Q. And this engine was not assigned to switching service within that period?

A. She was not. The engine arrived on A. O. 1, on 8/23.

Q. On August 23, is that it?

A. Yes, sir.

Q. Arrived on what?

A. A. O. 1, is a symbol of the train, and arrived on 8/21, on N. O. 5. Do you want the departures along with the arrivals?

Q. Well, whichever way is more convenient for you to give them.

A. Well, I can give you—show, departed on 8/19 on O. N. 2; arrived, on Pool No. 3, 8/17, departed on Pool No. 3, 8/16; arrived on No. 3, 8/50, departed on O. N. 2, 8/12, arrived on No. 5, 8/11. That is all I have the records of to cover on that period."

Mr. Brumley: Let's agree that should be 8/15; that 8/50 there is a mistake; third line under folio 99, 8/50 is changed to 8/15.

Mr. O'Neill: Yes.

[fol. 272] (Reading continued:)

"Q. Those are all before the date of the accident?

A. Yes, sir.

Q. Have you any records since the date of the accident?

A. Yes, sir.

Q. How near to the date of the accident, and, for how much of a period do they cover?

A. Two weeks.

Q. After the accident?
A. Yes, sir.
Q. Will you give me those?"

Mr. Brumley: I suggest that the sheets from which Mr. Jennings has been reading, be marked for identification.

(26 sheets, 1 bundle, marked Plaintiff's Exhibit 1, this date, for identification, F. C. P., Steno.)

"Q. Give me the numbers and dates of arrival and departure, after the accident, for the period which you cover?
A. This will be from September 4 to September 18. Departed on O. N. 2 on September 4th, arrived on N. O. 5 on September 6th, and departed on Pool 6 on September 7. Arrived on N. O. 5 on September 8th, departed on O. N. 2 on September 9th. Arrived on N. O. 5 on September 11, departed on O. N. 2 on September 11th. Arrived on N. O. 5 on September 13th, departed on O. N. 2 on September 13th. Arrived on N. O. 5 on September 15th, departed on O. N. 2 on September 16th. Arrived on N. O. 5 on September 18th."

(28 sheets, marked Plaintiff's Exhibit No. 2, this date, [fol. 273] for Identification, F. C. P., Steno.)

"Q. Now, you have given us a list of the trips that this engine made, previous and after the accident, for a period of approximately 12 days in either direction?
A. Yes, sir.
Q. And you have given us those trips by characters, which have a meaning on your road?
A. Yes, sir.
Q. Now, tell us the place of starting and the place of finishing of the run known as A. O. 1?
A. From East Hartford, Connecticut, to Maybrook.
Q. N. O. 5?
A. New Haven to Maybrook.
Q. N. O. 2?
A. Maybrook to New Haven.
Q. O. 3?
A. N. O. 3? New Haven to Maybrook.
Q. I thought I had O. 3?
A. New Haven to Maybrook, N. O. 3.
Q. September 16 and 17?
A. That is his Pool number, 3.

Q. And on the 16th and 17th is Pool No. 3?

A. Yes.

Q. Now, what does Pool 3 mean?

A. That's New Haven-Maybrook service, either direction.

Q. N. O. 3?

A. New Haven to Maybrook.

Q. N. O. 5?

A. The same thing.

Q. And Pool No. 3?

A. The same as the other.

Q. Then all of these runs with the engine—that this engine made during those periods, were from a point in the State of New York to a point in the State of Connecticut?

A. Yes.

Q. Or from a point in the State of Connecticut?

A. Yes.

Q. Or from a point in the State of Connecticut to a point in the State of New York, or vice versa?

A. Yes.

[fol. 274] Q. And each time she made this run do these records show she had passenger cars or freight cars aboard?

A. They don't show it.

Q. Do you know, of your own knowledge, which she carried?

A. I am not in a position to say, any more than I have an idea.

Q. There are records that would show what she carried?

A. I imagine there are, in the Transportation Department."

Mr. O'Neill: I suppose it is agreed by the defendant that this was a freight engine, hauling freight and not passengers. Is that correct?

Mr. Brumley: Yes, we are willing to agree to that. I understand that it was engaged in no passenger service.

Mr. O'Neill: Yes, it was one of the heavy Santa Fe type road freight engines.

Mr. Brumley: I understand it did not engage in any passenger service, and we will admit that.

(Reading continued at fol. 108:)

"Q. When you take them to Reedville, how do you take them there?

A. Two ways.

Q. One way is to dead-head them there?

A. Yes, sir.

Q. On another train going from Maybrook across through Connecticut and so on head them up to Massachusetts?

A. Yes, sir.

Q. And the other way is to allow them to pull a train to some point in Connecticut, and then, dead-head from there to Reedville, Massachusetts?

[fol. 275] A. Yes, they generally sometimes take a train all the way through.

Q. Now, when they come back from Reedville, do you remember how they come back?

A. They are generally placed in storage for a period of time, and then they are sent out to the division that requires them.

Q. I mean, you don't know whether this engine had ever been on any other division or not, of your own knowledge?

A. No, sir.

Q. And how many of that type engine did you have in Maybrook at or about the time of the accident?

A. I couldn't tell you, I could give you a——

Q. To the best of your knowledge?

A. To the best of my knowledge and belief, probably there was ten there of that type."

(Several questions and answers are here omitted from reading. Reading continued at fol. 118:)

"Q. Now, that roundhouse was the only place at Maybrook that you could stable any of your engines, is that correct?

A. Yes.

Q. And you have said that the turn-table was the only means of getting into that roundhouse from the main line, by using the siding or whatever you call it?

A. The leads.

Q. By the use of leads?

A. Yes, sir.

Q. So that every time an engine came in from a run from New Haven, it would be brought over this turn-table into the engine house, unless it was immediately sent back?

A. Yes, sir.

Q. If it was to be immediately sent back, it would be [fol. 276] brought over the turn-table, turned around and sent back?

A. Yes, sir."

(Several questions and answers are here omitted from reading. Reading continued at fol. 121:)

"Q. Now, these engines that were brought into the round-house, and stabled there, were used in runs from Maybrook to Connecticut and other points east of Connecticut, were they not?

A. And other engines that went the opposite way, west.

Q. And where did they go, west?

A. Allentown, Pennsylvania.

Q. Where else?

A. Pen Argyl, Pennsylvania."

Mr. O'Neill: We will put in evidence our subpœna duces tecum to attend this trial, to the defendant. We will put in evidence the copy served on the defendant, which bears their stamp as having been received September 8th, 1930. Of course, it is understood that Mr. Brumley's notations on the side in pencil are for his own use—they are not a part of our notice.

The Court: I understand; it doesn't include the pencil memorandum.

Mr. O'Neill: No.

(Received in evidence and marked Plaintiff's Exhibit 13.)

Mr. O'Neill: Now, we call upon the defendant to obey and respect to this subpœna duces tecum which has been [fol. 277] marked in evidence; and so that we may judge of the necessity for all the documents therein contained, I understand that counsel for the defendant is prepared to make such admissions as a fact that he considers proper. And when he has made those into the record we will determine as to what further observance of the subpœna it may be necessary for your Honor to direct or request.

Mr. Brumley: That is all right, as far as that goes, but I would like to finish up with Jennings.

Mr. O'Neill: I agree that he has the right now to read anything that I omitted.

Mr. Brumley: In that connection I want to make the offer to cross examine Mr. Jennings in accordance with

the stipulation entered into between the parties at the time that Mr. Jennings' examination was taken before trial.

The Court: And the same ruling as before, and the same exception.

Mr. Brumley: I will read the parts Mr. O'Neill omitted, beginning at folio 110, of the record on appeal.

(Questions read by Mr. Brumley; answers read by Mr. Lewis.)

"Q. You had some motor trucks or movable trucks and cranes there, did you not?

A. Yes, sir.

Q. What do you call them?

A. Motor trucks.

Q. And they have a crane attached to them?

A. Yes, sir.

[fol. 278] Q. They are mounted on how many wheels?

A. Four wheels.

Q. And those wheels are what—hard wheels or pneumatic or what?

A. Hard rubber tire, steel wheels, and some spoked and some solid.

Q. They don't run on tracks?

A. No, sir.

Q. On what?

A. On concrete floors.

Q. A runway?

A. Yes, sir.

Q. How far away from this roundhouse do these runways go?

A. Oh, I imagine, one goes to the blacksmith shop and one to the Whiting hoist building.

Q. I am not particularly interested about any length or distance, they run to various buildings?

A. Yes, sir.

Q. And, some go down along the track?

A. In front of the tracks.

Q. Well, alongside, it would be in front?

A. In front and alongside, in the engine house where they go alongside of the tracks.

Q. Does one of them go down to the rubberneck track?

A. There is a branch off the one that goes to the blacksmith shop, that goes past the rubberneck.

Q. So that the car can be operated along that track?
A. Yes, sir.
Q. Now, how many of those did you have in operation at the time of the accident?
A. Two.
Q. And Bezue was on of the operators of those trucks?
A. Yes, sir.
Q. He was not employed by the railroad company as a car repairer or engine repairer, in a strict sense, was he?"

The Court: The objection is withdrawn, of course, now, is it?
[fol. 279] Mr. Brumley: Yes, of course.

(Reading continued:)

"Q. I will change it—Do you know, at the time of the accident, whether Bezue was employed by the railroad company as an engine repairer or car repairer?
A. He was employed in the unskilled forces.
Q. As an operator of one of these motor trucks?
A. As an unskilled force."

Mr. Brumley: I will skip down to:

"Q. Do you know whether or not he was given written orders at any time to do a particular job?
A. That is a difficult question to answer.
Q. If you can't answer it, say so.
A. I couldn't answer it, I wouldn't answer it.
Q. All right. Now, these trucks were used for various purposes about the roundhouse and the adjoining property?
A. What do you mean, by 'adjoining property'?
Q. I mean, wherever these concrete paths went where the truck could be operated?
A. All in the vicinity of the engine house.
Q. All right—then, we will have it known we are speaking of the engine house, entirely; that is the way you want to have it?
A. Yes, it certainly is.
Q. These trucks were used for various purposes in the vicinity of the engine house?
A. Yes, sir.

Q. Did you have any engines there in the roundhouse that belonged to other companies, that were stabled there at the time of this accident?

A. I couldn't tell you; we do have them, but at that time I couldn't tell you if any or not."

[fol. 280] Mr. Brumley: And then I think Mr. O'Neill went on there and stopped at folio 122. I will begin at folio 122:

"Q. What do you mean?

A. I mean, the engines that come into Maybrook and turn and go back over their own road. Similar to the Ontario & Western. They have engines going from Mayfield to Maybrook and into Middletown.

Q. They come into you?

A. Yes.

Q. They are not operated by the New Haven?

A. No, sir.

Q. Those operated by the New Haven, they go into Pen Argyl?

A. No, no; that is what I said, foreign engines; neither do they go to Allentown.

Q. They are the foreign engines?

A. Yes, sir.

Q. The New Haven engines run from points in Connecticut to Maybrook and back?

A. Yes, and sometimes they will run from Hopewell Junction, which is in New York.

Q. Do you have any passenger service into Maybrook?

A. One train.

Q. And, where does that come from?

A. Poughkeepsie.

Q. And what type of engine is put on that?

A. 2.2.0.

Q. That is a small type?

A. Yes, sir.

Q. And where does that engine stable?

A. Poughkeepsie and Maybrook.

Q. Now, about the various things that these men do with the trucks, these motor trucks, do you know of your own personal knowledge what they are?

A. Yes.

Q. Well, they use them, the cranes, for lifting purposes, do they not?

A. Yes, sir.

[fol. 281] Q. And for lifting up pump brackets to place them on engines?

A. Yes, sir.

Q. And at times these engines that they put pump brackets on, are hot engines, aren't they?

A. Not very often.

Q. They are, at times, hot engines?

A. Isolated cases.

Q. They put pump brackets on between runs, do they not, when an engine is not out for any other purpose except a pump bracket?

A. Isolated cases.

Q. They use these trucks to take off driving rods, do they not?

A. Yes, sir.

Q. And these driving rods are then taken by the truck to a vat and dipped in a vat?

A. Yes, sir.

Q. And then brought back and put on the engine?

A. No, sir.

Q. That is never done, to your knowledge?

A. No, not taken to a lye vat and put back on an engine.

Q. Sometimes, however, they are taken directly from the engine to the machine shop, and something done on them and then brought back and put on the engine?

A. That's different.

Q. They are done the other way, sometimes?

A. No.

Q. I say, sometimes they are taken directly from the engine to the machine shop?

A. Yes, sir.

Q. And something done on them?

A. Yes, sir.

Q. And then brought immediately back and put on the engine?

A. They are, yes, sir.

Q. In those cases, there are times when a rush job, and the man that brings them over with the motor truck waits for them and takes them back?

A. In some cases, yes, sir."

[fol. 282] Mr. Brumley: Now, we will skip to folio 132:

"Q. Do you know, of your own knowledge, what was done with engine 3221, from the 23rd day of August, 1929, to the 4th day of September, 1929?

A. In a general way."

Mr. Brumley: Now, we will go down to the end of folio 137:

"Q. Do you know, of your own knowledge, whether or not this particular engine had a boiler wash during the period of between August 23rd and September 4th?

A. Do I know personally whether the boiler was washed? I do know.

Q. It was washed?

A. Yes, sir.

Q. And, would that be washed by skilled labor or unskilled labor?

A. Well, that possibly would be done by unskilled labor; on a sub-division the boiler washers are paid as skilled men, but, under the accounts, they are classed as unskilled.

Q. Do you know, of your own knowledge, exactly how long this boiler wash took?

A. No.

Q. There was a part of that engine that was taken up to the machine shop during the time it was in?

A. Several parts.

Q. The main driving wheels were taken up there?

A. No.

Q. They weren't?

A. No, sir.

Q. Were any of the driving wheels taken up?"

Mr. Brumley: Let's correct that; "Were any of" instead of "Were any or"—6th line.

"A. Not to the machine shop.

[fol. 283] Q. Well, what other shop have you, besides the machine shop?

A. No other shop—we have a Whiting Hoist Building, but no other shop, besides the one machine shop.

Q. What kind of a building is that?

A. A building approximately 100 x 93.

Q. What do you do in there?

A. We have, in the past, done classified repairs in there.

Q. Was any part of this engine taken up to that shop?
A. Yes, sir.
Q. What part?
A. The main driving wheel.
Q. How many drivers did she have on?
A. Five.
Q. Ten wheels?
A. Yes, sir.
Q. And the main pair were taken to that shop?
A. Yes, sir.
Q. Rolled up?
A. Yes, sir.
Q. On tracks?
A. Yes, sir.
Q. And, what did you do with the bushings on them?
A. What?
Q. The bushings on the main drivers, anything?
A. I couldn't tell you now, I could look, at the report, and tell you.
Q. Of your own knowledge?
A. No, I couldn't tell you.
Q. Do you know, of your own knowledge, how much work was done on these main drivers in that shop?
A. I know the job done, yes, sir.
Q. I mean, how much time, of your own knowledge?
A. No, sir.
Q. And would that job be continuous; that is, a man working from 9 in the morning until 5 at night on it, or not?
A. It might possibly be a man would work from 7 o'clock in the morning onto it until 3:30 in the afternoon; [fol. 284] and, there might be another man come on at 3 o'clock, lap-shift for half an hour, and work until 11:30; I don't know whether so in this case.
Q. You don't know?
A. No, sir.
Q. Is there any record that will show that?
A. There might possibly be one.
Q. Was the jacketing of this engine taken off?
A. Over the fire-box.
Q. How much of the jacket was left on?
A. Oh, I should say it was 7/8th- of it left on.
Q. Were any of the other wheels taken off the engine?
A. Not the way my memory serves me, no, sir.

Q. The fire was dumped?

A. Yes, sir.

Q. How long did this engine remain in the round-house after August 23 before anything was done on it?

A. I couldn't tell you.

Q. Is there any record that would show that?

A. No, sir.

Q. Would a record show when they first started to do anything on it?

A. It might show, by the card of skilled help; the first man that went on to it, that would be as close as you could get to it."

Mr. Brumley: And then over to folio 146:

"Q. There were a number of minor repairs made on that engine at that time, were there not?

A. There were other repairs made, yes.

Q. Have you got your record here, showing what was done?

A. Yes, sir.

Q. May I see it?"

Mr. Brumley: And that is Exhibit A.

"Q. Now, you say that when an engine comes in for a [fol. 285] boiler wash, that certain set things are done to it?

A. Yes, sir.

Q. Examinations are made for certain set things?

A. Yes, sir.

Q. And among them are 38 items?

A. That there is among them, yes, sir, 38 items.

Q. And this shows the general inspection that is made at the time an engine comes in for a boiler wash?

A. That there is an abstract of the inbound inspector's report, engineer's report and house inspector's report.

Q. Made on every engine coming in for a boiler wash?

A. Yes, sir.

Q. And all these items—there are 11—of these items there are eleven that were not done on this engine?

A. That record shows what was done.

Q. Well, you say the ones marked, those are the ones that were done?

A. Yes, sir.

Q. Now, have you any other record that shows anything else that was done on this engine at that time?

A. I would have to check that against the other one here; I think there is another report here that has some of the things on, here."

Mr. Brumley: Then I offered—well, it is Defendant's Exhibit A. It is already in evidence. Down at the bottom of the page, folio 150:

"Q. I want to ask you one or two questions about this; I didn't see the third sheet. Are any of these items on the third sheet, numbered 1 to 16, included in the items on the first two sheets numbered 1 to 38?

A. No, sir.

Q. They are separate items?

A. Yes, sir."

[fol. 286] Mr. Brumley: I take it it will be stipulated that this Exhibit A, when it is referred to in the examination before trial in these questions that I have read, relates to what is now Defendant's Exhibit 1?

Mr. O'Neill: Yes.

(Reading continued;).

"Q. And when you said that these things were done, inspected at the time of the boiler wash, you meant to include the whole three sheets?

A. Yes, sir.

Q. Did or did not this engine come in for a boiler wash?

A. She did, and, other repairs.

Q. Now, may I see the other three sheets that you brought? (Clerk producing.)"

(Mr. Brumley's question and the answer omitted.)

"Q. Have you any record in relation to this engine, previous and immediately previous to the time she went in for the boiler wash, on August 23, 1929, showing that she was in need of repairs?

A. All we have is the daily inspections.

Q. How often are they made?

A. At the end of each trip or day's work.

Q. Now, these pieces of yellow paper—5 sheets—show the complete amount of work that was done on that engine?

A. No, sir.

Q. What do they show?

A. It's an explanation of what is necessary to perform or to go through with in order to accomplish the major items as reported and done on that engine.

Q. In other words, did you make this up?

A. Yes, sir.

[fol. 287] Q. This is your opinion of what is necessary to be done?

A. Yes, sir."

Mr. Brumley: Now, this was Plaintiff's Exhibit 3 at that time that Mr. Lewis offered in evidence. And now I offer it in evidence.

Mr. O'Neill: Well, we object to it upon the ground that it is incompetent, irrelevant and immaterial, and particularly upon the ground that the heading of it is a pure conclusion and it is obvious that it should not be allowed in evidence. There is no objection to the list of things, but the heading, a conclusion, would be inadmissible and improper. In other words, he couldn't testify to that himself.

The Court: Well, I think the heading is a conclusion.

Mr. Brumley: Well, maybe I can cross it out.

The Court: The heading is what he objects to.

Mr. Brumley: I have crossed it out.

The Court: Mark it in.

(5 sheets received in evidence and marked Defendant's Exhibit J.)

Mr. Brumley: Now, to go back to folio 154.

(Reading continued:)

"Q. Now, you don't know, of your own knowledge, whether or not everything that you give as you- opinion as necessary to be done, was done?

[fol. 288] A. I can't say whether it was done just in that way, but I can say it had to be done that way, or, the equivalent.

Q. That is your opinion?

A. I know it.

Q. But you don't know whether it was or not?

A. I know it had to be done.

Q. Now, will you please answer my question; if you can't answer it, say so; I say, you don't know whether it was done or not?

A. That isn't a check of actually what the man went through that done it—no, absolutely not.

Q. Then, the answer is, no?

A. No."

Mr. Brumley: Then over, just before folio 158:.

"Q. Has this engine, to your knowledge, since the date of this accident, been in Reedville for general overhauling?

A. Yes, sir.

Q. And, to your knowledge, about how often do these engines of this type and particularly this engine, that you know, go to Reedville for a general overhauling?

A. Particularly, this engine?

Q. Yes. First, particularly, this engine, if you know?

A. No, I don't know.

Q. Well, all right, the engines of this type?

A. Approximately, every 18 months, or, after they have accumulated 35,000 miles or over."

Mr. O'Neill: Now we take up the question of the response to and obedience to the subpœna, and the admissions which the defendant's counsel may care to make in lieu of production of the documents.

[fol. 289] Mr. Brumley: Well, we have many documents here. Now, I don't know just what Mr. O'Neill wants.

Mr. O'Neill: Well, the subpœna is extremely comprehensive. I understand that Mr. Brumley is prepared to make certain admissions which will greatly restrict the necessity of bringing a large amount of papers actually before the Court in evidence.

How would it do for the jury to take a recess while we discuss this?

The Court: I think we had better do that. Gentlemen, will you go out for ten minutes, and the Sheriff will notify you when we need you.

(The jury retired.)

Mr. Brumley: The defendant will stipulate that engine 3221, the engine involved in this case, for the period September 3rd, 1928, to August 9th, 1929, while actually in use by the New York, New Haven and Hartford Railroad

was engaged in freight service between the State of New York and the State of Connecticut, except for the period December 23rd, 1928, to December 31st, 1928, when it was engaged in yard service at Maybrook, but it still during that week was engaged in interstate commerce, that is, making up and breaking up trains in the Maybrook yard.

Now, the August 9th, 1929, period to August 23rd, 1929, is in evidence. I mean Jennings has already testified to that.

Mr. O'Neill: So that from the period, the date you first mentioned——

[fol. 290] Mr. Brumley: September 3rd, 1928.

Mr. O'Neill: The admission is then as from that date, September 3rd, 1928, until the date you specified, this engine when, to use your language, it was in actual use, was engaged in interstate commerce operations.

Mr. Brumley: Right.

Mr. O'Neill: That is admitted now.

The Court: Now, Mr. Brumley, Mr. O'Neill says he accepts that.

Mr. O'Neill: As far as it goes, yes.

The Court: Yes, as far is it goes.

Mr. Brumley: All right. I will make that stipulation, and it is accepted.

The Court: All right. You accept it, Mr. O'Neill, so far is it goes.

Mr. O'Neill: Yes.

The Court: And it therefore becomes the stipulation of record.

Mr. Brumley: The defendant stipulates that for the year September 3rd, 1927, to September 3rd, 1928, engine 3221, in question, when in actual use by the New York, New Haven and Hartford Railroad Company, and when operating in and out of Maybrook, New York, or in the Maybrook yard, New York, was engaged in interstate commerce.

Mr. O'Neill: Well, when you say "In use by the New York, New Haven and Hartford Railroad Company" you admit that it wasn't used by any other railroad?

Mr. Brumley: That is true.

The Court: Mr. Brumley's admission is that it was not used by any other railroad company, but his stipulation

[fol. 291] does not cover any other division, in case it was used in any other division.

Mr. Brumley: That is right.

The Court: But your examination of the records so far does not disclose whether or not it had been used in any other division?

Mr. Brumley: No, that is true.

(The jury returned.)

Raymond B. K. Jennings, a witness for the plaintiff, being called and sworn, testified as follows:

Direct examination.

By Mr. O'Neill:

Q. What position do you hold, Mr. Jennings?

A. General foreman, Maybrook engine terminal.

Q. Are you acquainted with the symbol numbers of the trains hauled by the engines which come in and out of Maybrook?

A. Yes, sir.

Q. And the terminæ of those runs?

A. On the New Haven service?

Q. Yes, on the New Haven.

A. Yes, sir.

Q. Now, I am asking you now with reference—I am using as a matter of convenience, though it is not in evidence, a sheet which constitutes part of Plaintiff's Exhibit 1 for Identification, of July 16th, 1930, which is referred to in the examination before trial, and under date of 8-23-29. Now, I will take No. 1, that is the first line, Pool 3.

Mr. Brumley: Now, wait a minute. I want an objection noted on the record that the question is incompetent, ir-

[fol. 292] relevant and immaterial in that the test is what plaintiff was doing at the time of the accident, and any evidence as to engines or car movements other than at the time of the accident, unless so closely related to that time as to be an essential part of it, is irrelevant and immaterial, and not a proper test of whether the plaintiff at that time was or was not engaged in interstate commerce.

The Court: Well, I am not entirely clear as to its relevancy or its materiality, but I assume Mr. O'Neill has something in his mind which he thinks is both material and relevant, and for that reason I will overrule your objection. But if I find that it has no materiality I will strike it out.

Mr. Brumley: May I take an exception?

The Court: Certainly.

Mr. Brumley: And may I except to the reservation of your decision on that?

The Court: Well, I don't reserve my decision. I rule now, and I overrule your objection and I grant you an exception. I merely stated that if I should find at any time it is neither material or relevant I will strike it out.

Mr. Brumley: And may I interrupt to say that in compliance with the subpœna we have in court here many other books, some dozen, awaiting inspection?

The Court: Yes.

By Mr. O'Neill:

Q. Pool 3. What is that?

A. Is it arrival or departure?

[fol. 293] Q. Well, you look at it, over there in that left-hand corner (showing witness).

A. That went to New Haven.

By the Court:

Q. Well, what signifies whether it is arrival or departure?

A. The notation on there.

By Mr. O'Neill:

Q. Now, Pool 3 is the time of departure?

A. She went to New Haven.

Q. From Maybrook, New York?

A. Yes, sir.

Q. And when we say New Haven and Danbury we are talking about cities in the State of Connecticut, aren't we?

A. Yes, sir.

By the Court:

Q. And you have on the New Haven Railroad no other station named New Haven except New Haven, Connecticut?

A. No, sir.

Q. Nor Danbury nor Hartford, except in the State of Connecicut?

A. No, sir.

Q. And no other station named Maybrook except in the State of New York; is that right?

A. Yes, sir.

By Mr. O'Neill:

Q. And it was hauled by engine 3225?

A. Yes, sir.

Q. The 3200 type of engine is a heavy Sante Fe freight road engine type, isn't it?

A. Yes, sir.

Q. And it is a very heavy locomotive, having five sets of drivers; is that right?

A. Yes, sir.

[fol. 294] Q. And it is used for this heavy across mountain service interstate from Maybrook, New York, to points in Connecticut?

A. Yes, sir.

Q. All this 3200 type?

A. There might be some on the other divisions, Mr. O'Neill.

By the Court:

Q. The other divisions would not be running into Maybrook?

A. No, sir.

Mr. O'Neill: Well, all we are mentioning here with this witness, is this one here on that 8-23-29.

Q. That went from Maybrook to Connecticut; isn't that right?

A. Yes, sir.

By the Court:

Q. Or Connecticut to Maybrook?

A. Yes, sir.

By Mr. O'Neill:

Q. Now, Pool 11 arriving.

A. Came from New Haven to Maybrook.

Q. What is that there (indicating)?

A. That is AO-1.

Q. Well, that is an arrival?

A. That came from East Hartford, Connecticut, to Maybrook.

Q. And Pool 3?

A. Arrival or departure?

Q. Departure.

A. Departed from Maybrook to New Haven.

Q. No. 5, arrival?

A. New Haven to Maybrook, Pool 5.

Q. It says N-o-5.

A. N-o-5, New Haven to Millbrook.

[fol. 295] Q. O. B 2?

A. Maybrook to Boston.

Q. O. B. 6, departure?

A. Maybrook to East Hartford.

Q. N-o-3, arrival?

A. New Haven to Maybrook.

Q. 951?

A. Maybrook to Poughkeepsie. Is that arrival or departure?

Q. It is marked 75, arrival?

A. That train is from Poughkeepsie to Maybrook.

Q. That is a passenger train?

A. Yes, sir.

Q. The only passenger train you had at that time?

A. Yes, sir.

Q. Have you any now?

A. No, sir.

Q. O. B. 4?

A. Maybrook to New Haven.

Q. O. E. 2?

A. Maybrook to Bridgeport.

Q. B. O 1?

A. That there is from New Haven to Maybrook.

By the Court:

Q. You had no station on your line named Bridgeport except the Bridgeport in the State of Connecticut?

A. No, sir.

By Mr. O'Neill:

Q. Pool 5?

A. Arrival or departure?

Q. Arrival.

A. That was New Haven to Maybrook.

Q. O. N. 6, arrival?

A. That is Maybrook to New Haven.

Q. 9 5 0?

A. That there is from Maybrook to Poughkeepsie.

By the Court:

Q. Is that a passenger train?

A. Yes, sir.

[fol. 296] By Mr. O'Neill:

Q. Pool 1?

A. Arrival or departure?

Q. Departure.

A. Maybrook to New Haven.

Q. And Pool 5. What is that?

A. Departure or arrival?

Q. Departure.

A. Maybrook to New Haven.

Q. Pool 6, departure?

A. Maybrook to New Haven.

Q. Well, I don't want to repeat where I have the same pools. 3 0 7, arrival?

A. From New Haven to Maybrook. That is a Boston train, but they interchange power.

Q. Now, you had other engines come in there hauling trains from Allentown to Pen Argyl, Pennsylvania?

A. Yes, sir.

Q. What line runs out there?

A. The Lehigh and Hudson and the Central Railroad of New Jersey.

Q. And their engine came in there?

A. Yes, sir.

By the Court:

Q. And Allentown and Pen Argyl are in the State of Pennsylvania?

A. Yes, sir.

By Mr. O'Neill:

Q. And those foreign engines that came in there daily into this roundhouse went through the same general course as your own?

A. The B. and H.'s and C. N. J., yes, that came from Allentown.

By the Court:

Q. And Pen Argyl?

A. No, not the ones from Pen Argyl.

[fol. 297] By Mr. O'Neill:

Q. Those two you mentioned got the same treatment, generally speaking, as your own locomotives?

A. Yes, sir; the ones that came from Allentown, but those from Pen Argyl, they didn't get the general treatment.

Q. Well, what was the difference?

A. The ones that come from Pen Argyl, they just merely come in, turned around, took water, and went right out again. The ones from the L. & H. come there and are tied up, stay there and repairs made, and depart—an eight-hour lay-over.

Mr. O'Neill: Well, may these sheets stay in our possession until we examine them?

Mr. Brumley: Certainly.

Mr. O'Neill: Now, we offer these sheets called "Daily consolidated engine movement log record, Maybrook Engine Terminal, which are part of Plaintiff's Exhibit 1 of July 6th, 1930, under date of 8-23-29, and which apparently include 8-10-29.

The Court: Now 8-23-20 would be August 23rd, and 8-10-29 would be August 10, 1929.

Mr. O'Neill: Yes. Which are referred to in the examination before trial. They are only marked in evidence so that some sensible summary can be made of them.

The Court: That is what I had in mind. It seems to me the feasible way to handle it is to offer them all in evidence, and arrange where they will be kept so that you can make a summary of them.

[fol. 298] Cross-examination.

By Mr. Brumley:

Q. Mr. O'Neill has asked you certain questions in reference to Plaintiff's Exhibit 1 of July 16th, 1930, as marked in an examination before trial. Now, will you look at the second sheet from the top and tell me whether that is a record of road engines or yard engines?

A. That is a record of yard engines.

Q. And the questions that Mr. O'Neill asked you about were in reference to road engines, were they?

A. Yes, sir.

Q. And you also have a record in those papers of the yard engines?

A. Yes, sir.

Q. And those yard engines also made use of the roundhouse at Maybrook?

A. Yes, sir.

Q. And went out and were repaired; is that right?

A. Yes, sir.

Q. And what do you mean when you say yard engine as distinguished from road engine?

A. A yard engine is an engine that is working in the yard in switching service, equipped for switching service by a foot board and grab irons, according to Government classification.

By the Court:

Q. And used to make and break up trains?

A. Yes, sir.

By Mr. Brumley:

Q. Well, after these trains were brought in by the engines that I called your attention to, the road engines, then your yard engines would take them and break up the trains and classify them; is that it?

A. Yes, sir.

[fol. 299] Q. In other words, they would work with these same interstate trains?

A. Yes, sir.

By the Court:

Q. As I get it, these different railroads bring into Maybrook yard trains from Pennsylvania and other points,

and in your yard they are classified and made up into separate trains and shipped to different points in Connecticut or Massachusetts, wherever they may go; is that correct?

A. Yes, sir.

Q. And that is what these other engines are engaged in?

A. Yes, sir.

By Mr. Brumley:

Q. And do you know whether some of the engines coming from other companies that come into Maybrook are hauling trains from within the State of New York?

Mr. O'Neill: I object to that.

The Court: Overruled.

Mr. O'Neill: Exception.

By the Court:

Q. The question is: Do you know?

A. I don't know.

The Court: He says he doesn't know. That is all there is to it.

Now, are you asking that those be marked for identification, or are you offering them?

Mr. O'Neill: I will offer them in evidence.

[fol. 300] The Court: They will be received in evidence and they cover the period between what dates?

Mr. O'Neill: August 10th, 1929, to Septerber 18th, 1929.

Mr. Brumley: Well, before they are received in evidence may I have my objection noted to all this evidence on the same grounds as previously stated, that is, that this evidence is incompetent, irrelevant and immaterial. It has nothing to do with what the man was engaged in at the time of the accident. Most of it has nothing to do with what he was engaged in on the day of the accident. It involves movements of trains, engines and cars with which he may or may not have had something to do on previous days or later days if he had not been injured, and is wholly irrelevant, is outside of the issues of this case, is outside of the question of interstate commerce, and it could be offered only on that question, and is wholly irrelevant to that issue. Therefore we object to these records going into evidence at this time.

The Court: Same ruling.

Mr. Brumley: Exception.

Redirect examination.

By Mr. O'Neill:

Q. Now, these sheets, each for the day it refers to, covers all of the engines which come into that Maybrook engine terminal?

A. Yes, sir; arrivals and departures.

Q. Covers them all?

A. Yes, sir, and the switch engine sheet covers the switchers.

[fol. 301] Q. There is no other engine of any kind except what is covered in these sheets?

A. No, sir.

Mr. O'Neill: Now, probably all that we will require then further in connection with our subpœna, so that you will not be obliged to either bring all these books back or put to no unnecessary inconvenience, is that if you will admit, which I think you can do readily, that for the year previous to Bezue being hurt, that is, from the time he worked in the terminal, that the yard and switch engines which came in and were handled at this terminal were of the same character as shown during this period.

The Court: What do you mean by the same character as shown? You mean their service, or the type of the engine?

Mr. O'Neill: That they would be the same type of engine and were engaged in the same service.

Mr. Brumley: Well, now, you haven't proven about the service of the switching engines.

Mr. O'Neill: I don't ask you to stipulate what the service was, but I say so far it is the same as the evidence discloses.

Mr. Brumley: I don't know.

The Court: Well, I understand that Mr. O'Neill states that under his subpœna duces tecum you may limit the books and papers to be produced to a period of one year prior to this accident.

Mr. O'Neill: Yes, because that is during the time Bezue was working for them. That is all it was.

[fol. 302] Mr. Brumley: Well, we will be glad to bring the books and papers.

The Court: Now, then, instead of bringing them all back, can't the Sheriff arrange to keep them all here for you? They are not books that you are using right along.

The Witness: They are simply matters of record.

The Court: Now, then, may I ask, Mr. O'Neill, what disposition you wish to make of those which are not offered in evidence?

Mr. O'Neill: I think we will give them to the defendant.

The Court: Don't you want to take them and look them over?

Mr. O'Neill: I would like to look them over.

The Court: Well, I don't believe there will be any objection to that.

Mr. Brumley: No. I suggest that Mr. O'Neill take them to his office.

The Court: Now, Mr. O'Neill, they have other stuff here. Do you want to examine that?

Mr. O'Neill: No. As I have said, a year back is all I want on that.

Now, I think that is all we can do today, your Honor.

Mr. Rockwood: I would like to call Dr. Schmitz before we adjourn, if I may. He has been sitting around here for two days. It won't take very long.

The Court: I will allow the doctor to be called out of order, as he has been here a couple of days. He is a witness for the defense and he should not be obliged to come back next week.

[fol. 303] Dr. WALTER SCHMITZ, a witness for the defendant (called out of order), being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Doctor, you are connected with the Horton Memorial Hospital in Middletown?

A. I am.

Q. And will you state, Doctor, your professional training and qualifications?

A. I am a graduate of Honneman Medical College of Philadelphia, in 1913. At the present time I am clinical director and in charge of the X-ray department of the Middletown State Hospital, and X-ray consultant to the Horton Memorial Hospital and Goshen Hospital and New York

City Municipal Sanitarium at Otisville. I also am in private practice.

Q. And did you have occasion in September of 1929 to make interpretations of certain X-rays of one Clarence Bezue, who was a patient in the hospital?

A. I did.

Q. I show you four exhibits marked Plaintiff's Exhibits 1-a, b, c and d, and ask you if those are the four plates that you interpreted at that time?

A. Yes.

Q. Now, Doctor, will you take those in order and state to the jury what your interpretation of those plates was at that time and is now?

(Witness puts X-ray film in shadowbox.)

A. I don't think we want to look at these others particularly, because this one is the one that shows chiefly the area of injury—this is Plaintiff's Exhibit 1-a.

The haziness in this area (indicating) is due to an injury which has superficially injured the back of the sacrum. This is the sacrum (indicating), this bone here which fits [fol. 304] in between these two pelvis bones; and the injury —I might describe it as being similar to the cracking of an eggshell; that is, this bone has a heavy shell on it, and the inner part, the body of it, is porous, that is, it is what we call cancellous, and on the front and on the back also it has a dense shell. And what happened was that the injury caused a fine breaking up of the back of this bone without breaking through it or without splitting it or separating it from any of the other bones.

By the Court:

Q. How many segments?

A. Well, the first two here (indicating). Here are the other three (indicating). And then this is the coccyx down here (indicating).

By Mr. Rockwood:

Q. Now, look at the 5th lumbar, Doctor. What is the pathology shown there?

A. I was a little uncertain—it doesn't seem to be definitely injured, although I thought perhaps the spinous

process here (indicating)—it is not entirely clear, but I thought perhaps this spinous process, which sticks out backward, also was hit on the end and perhaps cracked a little right there (indicating).

Q. Doctor, tell the jury in respect of these first two sacral segments what the contour of the posterior aspect is, that is, what the contour of the back of those segments is like.

A. Well, on the back of the sacrum there are above here a number of projections which are of similar nature to those above in the vertebrae, but smaller and what we [fol. 305] call rudimentary, that is, they are not developed, and also some little processes which stick out and get smaller as you go down. Maybe I might see that in one of these laterals here (examining other X-ray films)—yes.

Q. Which one is that?

A. Plaintiff's Exhibit 1-b. This, you see, is a side view, so the back of this bone (indicating) curves like this, you see, and the lower end is down here, of the sacrum. This is the upper part of the pelvis bone (indicating).

Q. That is the ilium?

A. Ilium—yes.

Q. Now, Doctor, do the other X-rays that you have there, Exhibits 1-c and 1-d, do they add any further enlightenment or aid to your interpretation?

A. No.

Q. I show you now three films, being Plaintiff's Exhibits 2-a, b and c, dated October 8th, 1929. Will you state, please, to the jury, putting them in the box, what your interpretation of those films is?

Mr. O'Neill: Well, if your Honor please, if he is going to be examined at this length we never can finish here in a comparatively few minutes. Of course, they could have asked to put this doctor on in place of any other witness.

The Court: Well, I am going to let the doctor testify, and I am going to let him go, if we stay a little later today.

Mr. O'Neill: Well, we can't cross examine him then.

The Court: Well, we will sit here and give you all the time to cross examine him you want.

[fol. 306] The Witness: This film shows still evidence of the condition I mentioned previously, but it is not as pronounced as before.

By Mr. Rockwood:

Q. What do you mean by that, it is not so pronounced as before?

A. Everything is clearer again, that is, the haziness which came from the shattering of the compact surface has been absorbed and we see the bones very clear and sharp again,—that is, practically so, except for a little haziness through where the center of the area of the injury was.

Q. Now, tell the jury what you mean by that, as to what happened in regard to that bone?

A. Healing has taken place, and that consists in absorption and also reconstruction of bone, of those little pieces; and after a time, after it heals, it becomes normal again if the condition has not been so pronounced as to cause extensive separation or destruction or something like that.

Q. Does that comment apply also to the 5th lumbar, Doctor?

A. Yes, we can see that quite clearly there. I see nothing unusual in its appearance there at all.

The Court: What is the date of that?

Mr. Rockwood: October 8th, 1929.

Q. Put the other two in, Doctor, and see if there is anything further that they will add.

A. No.

Q. I show you three films, being Plaintiff's Exhibits 5-a, b and c, dated November 1st, 1929. Do the same with those, Doctor.

A. These are two lateral views of the lower spine and sacrum (placing films in shadowbox).

[fol. 307] Q. By lateral you mean side views?

A. Yes, yes, but one anterior-posterior view. We notice a lift of the right side of the pelvis, the ilium, as the right one is elevated, and there is some twisting of the spine now and elevation of the right hip.

Q. Now, Doctor, as to the sacral segments and the lower spine, state whether there is any radio-graphic indication of definite abnormality?

The Court: Do you call an injury an abnormality?

By Mr. Rockwood:

Q. Abnormal condition of the bone, I think, is the radiographic——

A. Yes. Well, there is still a little haziness and it is not distinct enough to say, in this first sacral segment here.

Q. Now, tell the Court and jury from your examination of that, in simple terms, what you mean as to there being no definite indications of abnormality of the bone?

A. I would consider that it presented nothing distinctly unusual aside from this position, the elevation of the right hip which has taken place, and I notice a twisting of the spine, which is also a question of position and not of injury; that is, it is the position which has been assumed by the bones in relation to one another, and not as the result of fracture of these bones or of the hip bones, but due to the fact that he elevates his leg.

Q. I now, Doctor, show you Plaintiff's Exhibit 3, consisting of four films, and ask you if they were films that you have previously interpreted? They are dated May 1st, 1930. Put those in the shadowbox and tell the jury what [fol. 308] you find from an examination of those plates.

(Witness puts films in shadowbox.)

A. Well, here we see much more pronounced elevation of the right hip than we did before. This is the front-back, anterior and posterior view. It is dated here May 1st, and it shows a more pronounced elevation of the right hip, but still what we consider a question of position. I see in the sacrum and in the last or the 5th lumbar vertebra nothing unusual.

Q. In other words, Doctor, tell the jury in simple language what that X-ray indicates in respect to this condition of the bone that you described as of the first X-rays.

A. I would say that such injury as was had and seen in the first X-ray, the evidence had disappeared.

By the Court:

Q. The injury to the bone you are talking about?

A. Yes. As far as one can observe, we see no remains of that injury. The only remains we see of the injury is the secondary one, and that is the elevation, the twisting of the pelvis and elevation of the right hip.

By Mr. Rockwood:

Q. And that is a question of posture?

A. Yes.

Q. Not of trauma?

Mr. O'Neill: I object to that as leading. It may well be just what he said it was.

The Court: Objection sustained.

By Mr. Rockwood:

Q. Doctor, is there anything further to be added by an [fol. 309] examination of the remaining exhibits, the films of May 1st, 1930?

A. No.

Q. Now, Doctor, can you state definitely whether from those films there is any evidence of any pathology of the sacrum and lower spine?

A. I can see none.

Cross-examination

By Mr. O'Neill:

Q. Now, Doctor, when was it that the railroad company's representative arranged for you to be a witness here?

A. Let me see: Monday of this week.

Q. That was the first time any arrangement had been made with you?

A. Yes, definite arrangement.

Q. No arrangement before that had been made for you to come here as a witness?

A. No, sir.

Q. You were not told that you would be needed here on a certain day?

A. I was not told that I would be needed here on a certain day; no, sir.

Q. What were you told?

A. I was told that the case was coming up, but no arrangements were made with me to be present, nor was I told that I was expected to be present. It was thought that I would be needed—that was all.

Q. And in the meantime did you go out of the State?

A. Yes, sir.

Q. Where did you go?

A. I went to Thousand Islands and up to Montreal and Quebec.

Q. And when did you return?

A. I returned last Sunday.

Q. And you arranged to come here to testify as an expert witness for this defendant, did you?

A. Yes.

[fol. 310] Q. And you are being paid, of course, as an expert witness?

A. I hope to be.

Q. You have been here two days?

A. No, only got here today.

Q. Oh, you have not been here two days?

A. I got here this morning.

Q. I thought it had been stated you were here two days. Well, now let's see; when you were making your report in the hospital you didn't have any doubt or didn't throw any doubt upon the question of there being a transverse fracture of the base of the spinous process of the 5th lumbar? You just said it was there, isn't that right?

A. I probably did. I am not throwing any doubt on it now. It looks like it, but it is not entirely clear.

Q. Well, you notice that you used a lot of qualifying language, didn't you, here today?

A. Why, I leave that to your judgment.

Q. Well, you will leave it to what the record shows you said, won't you?

A. Yes, sir.

Q. Have you no memory that you used qualifying language?

A. Why, certainly I have.

Q. When you were making your report to the hospital first and when you were not hired as an expert witness you just said radiograph of the pelvis and lumbar spine showed a transverse fracture of the base of the spinous process of the 5th lumbar?

A. Yes, sir.

Q. Without qualification?

A. Yes, I will say that I said that then.

Q. Well, didn't you say it?

A. Yes, if it is right there it is in my handwriting.

Q. And didn't you say that there was a diffused crushing of the posterior aspect of the first two sacral segments?

[fol. 311] A. That is just as I described it here today.

Q. Yes, with reference to that part of it.

A. Yes.

Q. Now, that diffused crushing means that this dense shell, you say, was broken up into many pieces?

A. Yes.

Q. And that is quite diffused there, isn't it?

A. Yes.

Q. Will you put one of those first ones in the shadowbox so we can see it?

A. Certainly. (Witness places film, Exhibit 1-a, in shadowbox.)

Q. There is also blood in these bones, isn't there?

A. Yes, sir.

Q. So when the bones are crushed in that way you have these minute hemorrhages?

A. Yes.

Q. And these minute hemorrhages would also cause that diffusion, would they not?

A. They don't show.

Q. But that is that diffusion there, that black spot (indicating)?

A. That is gas in the intestines.

Q. Where did you say the diffusion was?

A. This whole area here (indicating).

Q. Which whole area?

A. This area generally is a diffused white area.

Q. How big is that whole area in which you say there has been a breaking-up of the shell segments?

A. Chiefly right through there (indicating); and it is so diffused it has no definite head.

Q. I know. You have shown a distance about two inches perpendicularly, haven't you?

A. Yes.

Q. And about how far laterally?

A. About from here to here (indicating).

Q. Well, how far would that be, 2½ inches?

A. It is a slightly magnified film, you must remember.

[fol. 312] Q. That is the part where there was this injury and the diffused breaking-up of the dense shell, is that right?

A. Yes.

Q. You, of course, are here merely testifying as a rœntgenologist or radiographer?

A. And as a physician.

Q. And as a physician. And expressing no opinion as to the nerves or other tissues which may have been injured incident to this injury?

A. No, I have not.

The Court: We will now adjourn until next Thursday, October 9th, at 10 o'clock.

I think I should caution you not to talk over this case even among yourselves, not to talk it over with anyone else, and not to allow anybody else to talk about it in your presence; and I would prefer that you didn't read any paper which had any remarks in about this lawsuit, because I want you to depend on what you see and hear here to decide this case.

(An adjournment was here taken to October 9th, 1930.)

[fol. 313] Carmel, N. Y., October 9th, 1930.

OFFERS IN EVIDENCE

(Same appearances.)

Mr. O'Neill: Now, if Your Honor please, the defendant has produced pursuant to subpœna 3 papers called monthly report of work done on locomotives at Readville shop, and refers to the engine in question, No. 3221; and I offer those in evidence as bearing upon the difference in the character of the work there.

Mr. Brumley: No objection.

(Received in evidence and marked Plaintiff's Exhibits 14-a, 14-b and 14-c.)

Mr. O'Neill: We offer in evidence a group of sheets fastened here which is produced by the defendant, and one group seems to be marked Plaintiff's Exhibit 1 for Identification, "F. C. P." July 16, 1930—I think it is on the examination before trial—and the other one, Plaintiff's Exhibit 2 for Identification, marked the same date. We offer those in evidence, these sheets being the daily consolidated engine movement log record, and from this I examined the defendant's employee the other day for him to give us an explanation of the symbols of the trains.

(Received in evidence and marked Plaintiff's Exhibits 15-a and 15-b.)

Mr. O'Neill: How far is it from Maybrook to the state line?

[fol. 314] Mr. Brumley: I am advised that by railroad it is about 70 miles from Maybrook to the state line. I will be willing to concede that on the record. Do you want that concession?

Mr. O'Neill: Yes, assuming that that is correct.

The Court: Well, it is approximately correct.

Mr. O'Neill: If these other sheets which were mentioned are considered in evidence, we will rest. They are the ones between 8-23-29 and 9-18-29.

Mr. Brumley: I have no objection that they be marked in evidence as part of the plaintiff's case, produced by the railroad company, daily consolidated engine log records from 8-23-29 to 9-3-29 inclusive.

The Court: All right; they are received and given a number. They can be produced any time.

(Received in evidence as Plaintiff's Exhibit 16.)

Mr. O'Neill: Now, we rest.

MOTION TO DISMISS

Mr. Brumley: We move to dismiss the complaint on the grounds the plaintiff has failed to prove interstate commerce, has failed to prove that the plaintiff comes under the Federal Employers' Liability Act at the time and place of the accident; that the evidence shows that he was not engaged in such commerce at such time and place; and that the engine had been withdrawn from service; that he was [fol. 315] engaged in repair work in connection with that engine at the time; and that he was not engaged in commerce or movement in any way. We also move to dismiss the complaint on the grounds of failure of proof of negligence, and further that it appears affirmatively that the plaintiff assumed the risk and that the sole cause of the accident was the negligence of the plaintiff himself.

The Court: Now, as to the question of interstate commerce; upon the evidence which is now before me, and upon

the authority of Law against the Illinois Central Railroad Company, 208 Federal Reporter, 869, cited and not disapproved in the case of the Industrial Accident Commission of the State of California against Davis, 259 U. S. 182, I hold that the engine was an instrumentality of interstate commerce, that it was not withdrawn from the service but that roundhouse repairs were being made and that during that time it continued in the service and was an instrumentality of interstate commerce, and the plaintiff at the time was engaged in interstate commerce work upon an instrumentality of interstate commerce that had not been permanently withdrawn from the service.

As to the question of negligence of the defendant, that is a question of fact for the jury, and I do not hold as a matter of law there is no proof of negligence.

As to the question of assumption of risk, that is also a question of fact for the jury.

As to contributory negligence, the motion can not suc- [fol. 316] ceed because in the first place contributory negligence is a matter of fact for the jury, and in the second place, this being under the Federal Employers' Liability Act, if there were contributory negligence it would only be in reduction of damages and not an entire defense.

So your motion is denied on all four grounds and exception given to you on each one.

Mr. Brumley: May I state specifically with reference to the interstate commerce feature I would like to except to Your Honor's ruling at this time before the introduction of the defendant's evidence, that as a matter of law the plaintiff was engaged in interstate commerce.

The Court: But my ruling was upon the evidence now before me. I hold that he was engaged in interstate commerce. Your evidence may change it from a question of law to a question of fact. But I can't on my ruling now anticipate some evidence that is not introduced in court. But upon the evidence which is before me now, and being obliged to rule by your motion, I hold that he was engaged in interstate commerce and that the company was engaged in interstate commerce and the locomotive was an instrumentality of interstate commerce.

Mr. Brumley: Your Honor has granted me an exception.

The Court: Yes, on each ground.

[fol. 317] RAYMOND B. K. JENNINGS, being recalled as a witness for the Defendant, testified as follows:

Direct examination.

By Mr. Brumley:

Q. Mr. Jennings, you are employed by the New Haven Railroad Company?

A. Yes, sir.

Q. What is your position?

A. General foreman, Maybrook engine terminal.

Q. How long have you been there?

A. I have been employed by the railroad company 15 years and over.

Q. At the time of the accident to Mr. Bezue were you general foreman of the Maybrook terminal?

A. Yes, sir.

Q. Now, I show you Defendant's Exhibit I, consisting of 3 pages, and ask you what is meant, if you know, by the different notations on the recitations of these pages, "Yes" and "No"?

Mr. O'Neill: Well, I object to this. It doesn't appear that he made them; something written in pencil, "Yes" and "No." And further I call attention to the fact that these are not—Is this the same paper we had before?

Mr. Brumley: That is in evidence.

Mr. O'Neill: Well, I understand that they are not the original records at all, but that they are some sort of summary—and I may be wrong on it, I don't want to make a misstatement—probably prepared for the trial.

The Court: The objection is overruled.

[fol. 318] Mr. O'Neill: Exception.

Mr. Brumley: No grounds for the statement "Probably prepared for the trial." No evidence of that whatever.

The Court: I have ruled in your favor. Can I do more?

Mr. Brumley: No, except that I resent the remark of Mr. O'Neill.

(The question was read by the stenographer.)

The Witness: "Yes" means that the job was completed and was satisfactory to the inspector, and "No" means that the job was not done.

By the Court:

Q. It doesn't mean that yes, they found that to be in that condition?

A. No.

Q. All that means is that some inspector went over and checked up and found they hadn't done the work?

A. Yes, sir, either hadn't done it or hadn't done it to his satisfaction.

Q. Of course, you would assume that if it wasn't done right that it would not be to his satisfaction?

A. Yes, sir.

By Mr. Brumley:

Q. Now, I notice at the bottom of the first page the name "R. Quick." Who is R. Quick?

A. He is the house inspector on days.

Q. And at the bottom of the second page I notice the name of "G. Cook." Who is G. Cook?

A. House inspector on second trick.

[fol. 319] By the Court:

Q. Do they have 3 tricks?

A. Yes, sir.

Q. 8 hours each?

A. Yes, sir.

By Mr. Brumley:

Q. And at the bottom of the third page the name "G. I. Cassidy." Who is he?

A. Boiler inspector.

Q. And were they in those positions on September 2nd, 1929?

A. Yes, sir.

Q. Now, on page 1 I notice item 23, "Re-fit R. L. No. 1 side rod brasses." Do you know of your own knowledge whether that work was done or not?

A. No, sir.

Q. Does that record that you have there indicate whether it was done or not?

Mr. O'Neill: Objected to. It speaks for itself.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: No.

By Mr. Brumley:

Q. Now, do you know whether item No. 4 was done?
A. No.
Q. Now, will you go over to page 3, items 1 to 16. Does it appear from that record whether those items were attended to?

Mr. O'Neill: Objected to. The record speaks for itself.
The Court: Well, he can answer "Yes" or "No."

The Witness: Yes.

[fol. 320] By Mr. Brumley:

Q. Were they attended to, according to that record?

Mr. O'Neill: Same objection.
The Court: Overruled.
Mr. O'Neill: Exception.

The Witness: Yes, sir.

By Mr. Brumley:

Q. Now, I call your attention to item No. 8 which reads "217 bolts leaking L side sheet, 210 R side." Just what does that mean?

By the Court:

Q. Does it have a meaning different from what it says?
A. Just an explanation of what it is.

By Mr. O'Neill:

Q. The bolts have a number, don't they?
A. A number.

The Court: Well, Mr. Brumley, I don't know but what I will have to sustain the objection there. It simply says the bolts were leaking, and I don't think the paper is ambiguous at all. We don't need any explanation of that.

By Mr. Brumley:

Q. Well, "L" stands for what?
A. Left side.
Q. And "R" for right side?
A. Yes, sir.

Q. And in order to make that repair to those 217 bolts [fol. 321] leaking on the left side and 210 on the right side in your opinion how much time would be consumed?

Mr. O'Neill: I object to that.

The Court: Well, you better qualify him and see if he knows. Is he familiar with repairs?

By Mr. Brumley:

Q. Are you in charge of the repair men there?

A. General charge, yes, sir.

Mr. O'Neill: That depends on a lot of things. We object to that.

The Court: Well, he hasn't gone quite far enough yet. He is in charge of the repairs. Is he familiar with the length of time it takes to make repairs of that kind?

By Mr. Brumley:

Q. Do you see those repairs made from time to time?

A. Yes, sir.

Q. And are you acquainted with the amount of work involved?

A. Yes, sir.

By the Court:

Q. And the length of time it takes?

A. Yes, sir.

By Mr. Brumley:

Q. And the number of men that it will take?

A. Yes, sir.

Q. And you have personally seen it done?

A. Yes, sir.

[fol. 322] Q. Now, what is your opinion as to the amount of labor in number of men and time to do that work referred to in item 8?

Mr. O'Neill: First he ought to describe the work. Let me look at the memorandum, that particular one you are asking about.

The Court: I think I will let you take care of that on cross examination, Mr. O'Neill.

Mr. O'Neill: I just wanted to look at it to be sure we understand. We object; it doesn't describe the work that they do.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: 2 men 5 days to the job, as noted on the report. That is without getting ready, or anything. That is to do just as the report reads.

By Mr. Brumley:

Q. Everything that was done?

A. No, just as the report reads.

By the Court:

Q. Well, as the report reads, what needed repairs was 217 bolts?

By Mr. Brumley:

Q. You are referring to item 8, are you?

A. Yes, sir.

By the Court:

Q. Does the record show that that was or was not done?

A. Was done.

[fol. 323] Mr. O'Neill: Now, in view of his answer that he says just as the report shows, and so that we can check that along, where does it say that that took 2 men 5 days?

The Court: He doesn't claim the report says that.

Mr. O'Neill: Oh, yes, he does.

The Court: I beg to differ with you. The question was; in your opinion from your experience how long would it take to do that work? And he said in his opinion it would take 2 men 5 days, without getting ready, just to do the work.

Mr. O'Neill: And he added "Just as the report shows."

The Court: Well, if he said that he meant the work just as the report says.

The Witness: Yes, just the work the report shows.

By Mr. O'Neill:

Q. Is there any memorandum on here which at all indicates the length of time it actually took to do these different items?

A. No, sir.

Q. Or the number of men?

A. No, sir.

Q. Isn't that a usual practice in making reports to mark out the length of time that it takes to do a job?

A. Not on this report.

Q. It is the usual practice though in repair work, isn't it?

A. We have a report on that—not on this report.

Q. You have such a report?

A. Yes, sir.

Q. In this case?

A. To a certain extent.

Q. Where is that?

A. I have it there.

[fol. 324] Mr. O'Neill: Then we object to any more of his summaries and opinions as to how long it took or should take.

The Court: The objection is overruled.

Mr. O'Neill: I except.

By Mr. Brumley:

Q. Now, I call attention to page 2 of Exhibit I, items 26 to 35 inclusive. Does it indicate on there whether that work was done?

A. It does, yes, sir.

Q. What is meant in a general way by "Renew R-1 knuckle pin bushing?"

Mr. O'Neill: We object to that. That is plain enough.

The Court: Well, it may be a technical explanation, so I will allow it.

Mr. Brumley: I rather thought the wording was more or less technical.

The Court: I have allowed it.

By the Court:

Q. What does "R-1" mean?

A. That means the position, Right I knuckle pin bushing. It necessitates taking the rod down, taking it to the machine shop.

Q. That isn't what he asked you. He asked you what it meant. Does it mean putting in a new bushing in place of the old one or worn one, rather?

A. Yes, sir, it means to renew the bushing in place of the defect what exists, as it exists whatever it might be.

By Mr. Brumley:

Q. Does it involve taking the side rods down?

[fol. 325] A. It can be done without taking them down, this particular one.

By the Court:

Q. What is a bushing?

A. A bushing is a piece of metal put into a rod or anything so that the main portion will not wear, the wear will come on the bushing.

Q. It is generally like a little piece of round pipe that goes around a rod, then the other part comes outside of that?

A. Yes, bronze, or other different kinds of metal; sometimes case hardened steel, sometimes bronze. And it is used so that they can renew the bushing when the wear accumulates without injuring the main part of the machine.

By Mr. Brumley:

Q. Now, in your opinion, to do those items——

The Court: Which items?

By Mr. Brumley:

Q. 26 to 35 inclusive on page 2 of Exhibit I, how many men would be required and how much time would be consumed?

Mr. O'Neill: Some objections, and upon the ground also it now appears that there is a record which he has which

shows, as a matter of fact, how long it did take on this job.

The Court: Objection overruled.

Mr. O'Neill: Exception.

[fol. 326] The Witness: 32 hours for 2 men complete.

By the Court:

Q. Is it not a fact that the engine came in for repairs on the 23rd of August and was sent out on the road on the 4th of September?

A. Yes, sir.

Q. And all the repairs that were done were done between those two dates?

A. Yes, sir.

By Mr. Brumley:

Q. Now, in order to do the boiler washing items that you have testified to, items 1 to 16 on page 3, was it necessary to have the fire withdrawn from the engine?

A. It could be done without withdrawing the fire but it would be impracticable.

Q. Do you know whether as a matter of fact the fire was withdrawn from this engine?

A. Yes, it was.

Q. During this time?

A. Yes, sir.

Mr. O'Neill: I don't see why we should waste any time on that. The plaintiff testified to that; the fire was out but the coal was in.

The Court: Well, he has some set evidence which he thinks may appeal to a greater court than is here and on which facts that court may hold that it was withdrawn from interstate commerce, and I am going to give him an opportunity to put in his evidence as he sees fit to put it in, even though I may differ from him. I think it is his duty to protect his client.

[fol. 327] By Mr. Brumley:

Q. Do you know whether the driving wheels on this engine were removed?

A. One pair.

Q. And where were they taken?

A. Taken from the engine to the Whiting Hoist building.

Q. And do you know what was done with those driving wheels there at the Whiting Hoist building?

A. Yes, sir.

Q. What?

A. Journal turned.

Q. What does that mean?

A. That means placing the driving wheels complete- in the lathe, putting and attachment for turning of the journals in the lathe.

By the Court:

Q. Is that to make them round?

A. Yes, sir.

Q. And that is done by a little cutting blade which is placed on it and the journals turned to it?

A. Towards it, yes, sir.

Q. And that takes off a little bit of a shaving?

A. Yes, sir.

Q. To make it perfectly round, is that it?

A. Yes, sir.

Q. That is what you mean by turning?

A. Yes, sir, to make it perfectly smooth so the friction will be reduced so that the bearing will run cool.

By Mr. Brumley:

Q. Do you know who did that work?

A. Yes, sir.

Q. Who?

A. Mr. Dickson.

Q. Is he in court?

A. Yes, sir.

Q. Now, I show you a photograph and ask you whether that is a picture of the corner of the Whiting Hoist room [fol. 328] where the lathe was?

A. Yes, sir; that is a picture of the lathe.

Q. And does that show the lay-out of that building as it was at the time of the accident?

A. Yes, sir.

Mr. Brumley: I offer it in evidence.

Mr. O'Neill: No objection.

(Photograph received in evidence and marked Defendant's Exhibit D.)

By Mr. Brumley:

Q. Now, I show you another photograph and ask you whether that photograph shows the exterior of the Whiting Hoist building?

A. Yes, sir.

Q. Is that the last building on the right of that photograph?

A. Yes, sir.

Q. And what is in that building?

Mr. O'Neill: Now, we object to that. This is immaterial. I don't object to any part of it where they said, for instance, here that the lathe was used to turn a wheel. That may have some relevancy and materiality. But the exterior of the building and what else is in there that was not used for this job has got nothing to do with it.

The Court: The objection is overruled. Mr. O'Neill, I am going to hold that he has a right to show the extent of the repair shops which are at Maybrook, as bearing upon the question of the withdrawal of this instrumentality of interstate commerce from the service. I think he has a right to show that.

Mr. O'Neill: Very well. We except.

[fol. 329] The Witness: There is in this building 4 tracks, 2 with pits, the entire length of the building, one with no pit, and one with a half pit, with a Whiting Hoist on it, capacity 400 tons.

By Mr. Brumley:

Q. And when you say Whiting Hoist what do you mean?

A. I mean an appliance for raising an engine off its driver wheels.

Q. And there is this lathe that you have referred to?

A. Yes, sir, 90 inch wheel lathe, and a small 18 inch lathe equipped with wires for electric welding, equipped with piping for acetylene welding, tool room, and electrical shop.

By the Court:

Q. Is this the Whiting Hoist shop you are speaking of now?

A. Yes, sir.

By Mr. Brumley:

Q. Now, to the left of the Whiting Hoist shop is another building, to the left of the photograph. What building is that?

A. That is a small building that is used for a carpenter shop and first aid room, call room, inspectors' office and call inspector's office.

Q. Now, those two buildings that you have described are where in reference to the roundhouse?

A. The roundhouse is to the east of them buildings.

By the Court:

Q. A what, emergency repair room?

A. No, I said first aid room.

[fol. 330] By Mr. Brumley:

Q. Now, is there another building shown in that photograph?

A. That there is a continuation of the roundhouse that you see there.

Q. This building at the left?

A. Yes, sir, it is a continuation.

Q. And what is there in that part of the roundhouse?

A. First is the general foreman's office, the clerks, next one is the night foreman's office, the next portion is the dispatcher's office, next one is the engineers' rest room, machinists' locker room, store room, machine shop, engine house.

Q. Now, are repairs made to engines or parts of engines in any other place than the Whiting Hoist building?

A. You are referring now to around in September, 1929?

Q. Yes, in that period.

Mr. O'Neill: At Maybrook.

By Mr. Brumley:

Q. At Maybrook.

A. You mean the work as was done in this case?

Q. No; I mean was work done on engines or parts of engines in any other building than in the Whiting Hoist building that you have described?

A. In the engine house.

By the Court:

Q. What do you mean by the engine house?

A. That there is the building to the east of that. We have a picture of that.

Q. Well, is that what you call a roundhouse?

A. Yes, engine house and roundhouse are the same thing.

[fol. 331] Mr. Brumley: Now, I will offer that picture in evidence.

(Photograph received in evidence and marked Defendant's Exhibit J.)

By Mr. Brumley:

Q. Is this a photograph of the roundhouse as it was at the time of the accident (showing witness)?

A. Yes, sir.

Q. I call your attention to Defendant's Exhibit C. How many sections are there to that roundhouse?

A. 3 sections.

Q. And how many tracks are there?

A. 27.

Q. How many tracks to a section?

A. 10 for the first one, 10 for the second, and 7 for the last.

Q. Are there any pits under those tracks?

A. Yes, sir, everyone of them has a pit under a certain portion of them.

Q. And do you know where this engine 2231 was at the time of the accident?

A. I just don't remember where she was.

Q. How far was it from the Whiting Hoist building up to the switch over which this wheel was rolled?

A. 1062 feet,

Q. I say from the Whiting Hoist building to the switch?

A. 619 feet. I beg your pardon.

Q. You measured that yourself, did you?

A. Yes, sir.

Q. And how far is it from the switch to the engine house or to the place of the accident?

A. 1082 feet, approximately.

Q. Do you know the object of the move from the Whiting Hoist building with these wheels that the plaintiff was making that day?

A. Yes, sir.

[fol. 332] Q. What was going to be done with those wheels, if you know?

A. The wheels were to be taken from the Whiting Hoist building and placed on pit 16 to be prepared to go under the engine the following morning.

Q. Under engine 3221?

A. Yes, sir.

By the Court:

Q. Pit 16 was located where?

A. In section No. 2.

Q. Of the roundhouse?

A. Yes, sir.

By Mr. Brumley:

Q. Did Mr. Bezue have anything to do with the actual placing of the wheels on the engine?

Mr. O'Neill: Objected to. He doesn't know.

By the Court:

Q. Of course you do know?

A. Yes, sir.

The Court: Objection overruled.

Mr. O'Neill: Exception.

By Mr. Brumley:

Q. Did he have anything to do with it?

A. He did not.

Q. During the time that this engine was in there, from August 23rd to September 4th, was the boiler of the engine washed?

A. Yes, sir.

Q. And at that time these other repairs were made on it as appeared by Exhibit I, is that right?

A. Yes, sir.

[fol. 333] Q. Now, there is a record kept of some of the work done in the nature of repairs, isn't there?

A. Yes, sir.

Q. Is there unskilled labor as well as skilled labor at the engine house?

A. Yes, sir, there is.

Q. Is there any record kept of unskilled labor?

A. Not as per operation performed.

Q. Is there any record kept of unskilled labor in reference to the job they are doing at a particular time?

A. No, sir.

Q. So that have you any record of the amount of unskilled labor that was put on this engine at that time?

A. No, sir, I have not.

Q. How often was it the practice to have the engine boilers washed out?

A. Every 30 days.

Q. And was that done in accordance with some Federal provision?

A. It was.

Q. Now, have you got with you the bonus cards, so called, showing some work that was done on that engine?

A. Yes, sir.

Q. Where are they?

A. I have them here.

Q. Have you got the bonus cards for the period of August 24th to September 2nd?

A. Yes, sir.

Q. Now, bonus cards mean what?

A. Bonus cards are a check of the individual operation done on the engine, checked by a checker and signed by the foreman in charge of the man.

Q. Have you examined those bonus cards at my request?

A. Yes, sir.

Q. And can you say whether, from your examination, those bonus cards show on what days work was done?

A. Yes, sir.

Q. And do they indicate on what days skilled labor did not work on that engine?

A. They would, yes, sir.

[fol. 334] Q. Do you know, from your examination, what days no skilled labor was applied to that engine?

A. I can tell you by re-checking the cards. I don't just exactly remember it.

Q. Well, will you let us know how many days skilled labor worked on that engine from August 23rd to September 2nd?

A. Yes, sir.

Q. Have you got a memorandum of your previous examination of those cards?

A. No, I haven't. I will have to check them.

Mr. Brumley: Maybe Mr. O'Neill will admit this memorandum.

The Witness: I made it, but I have just forgot it.

Q. Is this your memorandum (showing witness)?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir.

Q. I show you this typewritten memorandum and ask you whether that refreshes your recollection of the result of your examination of those cards?

A. That is right.

Q. Well, now, after having your recollection refreshed can you say what days no skilled labor was on that engine?

A. August 24th and 25th.

Q. And did your examination show that on all other days during that period skilled labor did go on that engine?

A. Yes, sir.

Q. Does your examination show the number of hours each day that was put on the engine?

A. For operation and job. It doesn't tally up per day any more than 8 hours each day for each individual worker, and the efficiency is figured on the actual time, and on standard time.

[fol. 335] Q. What I am trying to find out is was there at least 8 hours put on this engine every day except those two?

A. Not necessarily, no, sir.

Q. No; it simply meant that there was some work done on each of those days by skilled labor, except the days mentioned?

A. Yes, sir.

By Mr. O'Neill:

Q. May I ask him at this time whether this item 8 that he has been talking about, whether he calls that skilled labor or unskilled labor?

A. To do the work on the engine?

Q. Yes, that item 8 that you were asked about; item 8 on page 33.

By Mr. Brumley:

Q. 217 bolts leaking L side, 210 R side. Is that what you mean? Is that skilled or unskilled?

A. Skilled labor.

Q. Tell me now what unskilled labor is connected with?

A. Unskilled labor is the labor work cleaning up around the property, handling wheels.

By Mr. O'Neill:

Q. You mean rolling them down?

A. Rolling them down, putting things in position for the mechanics, cleaning windows, for instance, operating coal pockets, dumping coal, running turntable.

By Mr. Brumley:

Q. Now, how many road engines did you have going in and out daily?

A. From 31 to 37 per day, that is, all told.

[fol. 336] Q. And how many switch engines were making use of the terminal?

A. Beg your pardon, Mr. Brumley. That was all together.

Q. All together?

A. Yes, sir.

Q. Road engines and switching engines?

A. And foreign engines.

Q. Now, how many road engines were there at that time?

A. From 10 to 15.

Q. Now, could the work that was being done on engine 3221 at the time of the accident have been done on any track in the roundhouse?

A. No, sir, it could not.

Q. How many tracks could that work have been done on?

A. 2 in section No. 2, and 2 in section No. 1.

Q. Why was that work confined to those tracks?

A. On account of those tracks being equipped with a drop pit.

Q. What do you mean by a drop pit?

A. That there is a pit that goes in the opposite direction from the general pits and is large enough to drop a pair of drive wheels down in the pit.

Q. You drop them down in the pit, then run the engine over it, and then raise them up?

A. Yes.

Q. You have got a drop rail, or something to put them through?

A. Yes, sir.

Q. Without the driving wheels on could the engine itself run?

By the Court:

Q. Without these driving wheels?

By Mr. Brumley:

Q. Without the driving wheels could the engine run?

A. No, sir.

[fol. 337] Q. The engine would have to be pushed over the drop pit or pulled by another engine?

A. Yes, sir.

Q. Now, how many engines could be undergoing repairs of this character at one time?

A. It would be possible to take care of 5 of them.

Q. And that is the limit, is it?

A. Yes, sir, that would be the limit at the same time.

Q. Now, did you make an examination of the records in reference to engine 3221, as to when prior to the accident it had undergone boiler washes and other repairs?

A. Yes.

Q. Did you make a memorandum of that examination?

A. Yes, sir. November 14, 1927; January 23, 1928; Feb-

ruary 25, 1928; April 2, 1928; May 8, 1928; June 10, 1928; July 17, 1928; September 5, 1928; October 11, 1928; November 26, 1928; May 3, 1929; June 10, 1929; July 17, 1929; and this one here is the August 24th.

Q. Now, is it true that when engines come in from the road it was the practice during their lay-over period before going out on the next trip to make certain repairs?

A. Yes, sir.

Q. And how long usually was the lay-over between runs on engine 3221, for instance, a road engine, when it was in service?

A. Well, that would vary.

Q. Well, would it often come in one day and go out the next?

A. Yes, it would.

Q. And during that time some repairs would be made, I presume?

A. Every time the engine came in certain repairs were made.

Q. Now, there was kept a daily inspection report book, wasn't there, in reference to all engines?

A. Yes, sir.

[fol. 338] Q. Who made out that report?

A. The engineer made out a portion of it, and the inspectors on the inspection pit made out the remainder.

Q. Well, is this true, Mr. Jennings; that as a result of the engineer's daily report and the inspector's daily report what could be taken care of in a short time would be taken care of?

A. Yes, sir.

Q. Now, were there other items on that report that would be held over to the boiler washing period, so called?

A. In the event they weren't serious, yes, sir.

Q. And during the boiler washing period were repairs made that would take longer than repairs made between runs?

A. Yes, sir.

Q. So I understand that it was the practice where possible, and where the repairs were not serious, to hold over these longer repairs until the boiler wash period?

A. Yes, sir.

By the Court:

Q. The boiler wash period was substantially monthly?
A. Yes, sir.
Q. And at the time in question the moving of these wheels was a part of the monthly repairs which was incident to the boiler wash period?
A. Yes, sir.

By Mr. Brumley:

Q. Now, there has been put in evidence reports on work done at Readville. Readville is in Massachusetts, is it not?
A. Yes, sir.
Q. And there are shops at Readville?
A. Yes, sir.
[fol. 339] Q. Belonging to the railroad?
A. Yes, sir.
Q. What was the practice as to sending engines, road engines, for instance, like 3221, over to Readville? Was there a practice as to when they should go over, or must have consumed a certain mileage, or what was the practice?
A. The practice was after the engine had accumulated approximately 35,000 miles, and the general condition having some bearing on it, to put them in the general shop for classified repairs.
Q. Now, the repairs that were made on this 3221, as shown by Exhibit I, would you say that those were unusual in amount for that boiler wash period?

Mr. O'Neill: We object to that.
The Court: I am afraid of the word "Unusual" there. I had better sustain it on the ground that is leading. Let him state the facts, and let the jury say whether it was unusual.
Mr. O'Neill: It is a conclusion.

By Mr. Brumley:

Q. Was it common to make repairs to engines during the boiler wash period, such repairs as were made to this engine at the time of the accident?

Mr. O'Neill: Same objection. That allows him to draw a conclusion as to whether it was common or not, or usual

or unusual, and that is a conclusion, because there are many various things, and he might balance one with the other.
[fol. 340] The Court: I think I will allow him to ask the question, Mr. O'Neill; I think it is safer; whether the engines which received the boiler washes monthly, whether the amount of repairs to the other engines generally were to the same extent as here.

Mr. Brumley: That is exactly the same question.

Mr. O'Neill: With all respect to Your Honor, I object to that as calling for a conclusion.

The Court: Overruled.

Mr. O'Neill: Exception.

The Witness: These repairs on 3221 were not exceptional. As a matter of fact, there were other engines in for boiler washes that are heavier.

By Mr. Brumley:

Q. That had heavier repairs done to them; is that it?
A. Yes, sir.

Mr. Brumley: I think that is all.
Mr. O'Neill: No questions.

Lewis Dickson, a witness for the Defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Brumley:

Q. Mr. Dickson, what was your position with the railroad on September 2nd, 1929?
A. Why, I was a machinist.
[fol. 341] Q. And were you located at Maybrook?
A. Yes, sir.
Q. Now, did you do any work on any part of this engine 3221 around that time?
A. I turned the journal.
Q. And where did you do that work?
A. The Whiting Hoist building.
Q. And did you do that work alone, or did you have anybody help you?

A. Well, I generally have a helper to help me put the wheels in and take them out.

Q. And can you tell us how much time you spent on turning that journal, approximately?

A. Well, around 8 to 10 hours.

Q. How long?

A. Between 8 to 10 hours.

Q. And that work was done in the Whiting Hoist building?

A. Yes, sir.

Q. And that is the only work that you had to do in connection with that engine as far as you remember; is that right?

A. Yes, sir.

Mr. Brumley: That is all.

Mr. O'Neill: No questions.

Mr. Brumley: Now I think I will turn over the labors to Mr. Rockwood.

The Court: In other words, you think you have your main proof in as bearing on the question as to whether this locomotive was withdrawn from interstate commerce?

Mr. Brumley: Yes.

Mr. O'Neill: Well, we ask that it be now ruled as a matter of law that the engine and the plaintiff were then engaged in interstate commerce.

The Court: I don't know of any method in which I can [fol. 342] express my ruling, except that I may say to you that the proof in, in my opinion, has not changed my mind; and furthermore that I don't think there is a question of fact for the jury; that the proof, being uncontradicted, I am bound to instruct the jury as to whether or not the plaintiff and defendant at the time of the accident were both engaged in interstate commerce. Now, properly that ruling will come at the close of the case, but I only think it fair that both of you should know how I feel about it.

Mr. Brumley: Yes. Well, I take it you are making no ruling now.

The Court: No, because something may transpire that may change it. But so that Mr. O'Neill won't do any more worrying down there, why, I am telling him how I stand now: and I think it is fair to you. Now, you may introduce some more evidence that may change my mind.

Mr. Brumley: Your Honor, then I will reserve my exception.

The Court: There is no exception to be taken now because you must protect yourself at the close of the case by again raising this question. That is your duty, sir, and I know you are performing it.

Mr. Rockwood: I will recall Mr. Jennings.

[fol. 343] RAYMOND B. K. JENNINGS, being recalled as a witness for the Defendant, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Mr. Jennings, will you look at this picture and state whether that is a fair representation of the interior of the Whiting Hoist building, looking in the direction these wheels were rolled on the day of the accident?

A. In the direction but not the track.

Q. There are more than one set of tracks in that building?

A. Yes, sir.

Mr. Rockwood: We will offer it in evidence.

Mr. O'Neill: We object to this because that doesn't show the track or the place, and it isn't competent. They must have one that shows the place. It only litters the case with unnecessary photographs.

The Court: Well, it shows the building. I don't know how they claim it is relevant.

Mr. Rockwood: I just wanted the jury to see it. I will withdraw the offer at this time.

By Mr. Rockwood:

Q. Now, will you look at this picture, Mr. Jennings, and state whether that is a fair representation of the tracks and switches, as they appear, facing the Whiting Hoist building?

A. Yes, sir, they are.

Q. And does that picture show the track on which these [fol. 344] wheels were rolled out of the Whiting Hoist building on the day of the accident?

A. It does.

Mr. Rockwood: We offer that picture in evidence.

(Received in evidence and marked Defendant's Exhibit K.)

By Mr. Rockwood:

Q. Now, will you look at this picture and state whether that is a fair representation of the track alongside of the Whiting Hoist building, and the other buildings adjoining, down which these wheels were rolled on the day of the accident?

A. Yes, sir.

Mr. Rockwood: I offer it in evidence.

(Received in evidence and marked Defendant's Exhibit L.)

By Mr. Rockwood:

Q. Now, looking at this photograph state whether that is a fair representation of the tracks leading into the roundhouse, and whether one of the tracks shown in that photograph is the track on which this accident occurred (showing photograph to witness)?

A. It is.

Q. Take and mark with a pen the track on which this accident occurred.

By Mr. O'Neill:

Q. What is its number, to begin with?

A. Track 17.

[fol. 345] (Witness marks on photograph.)

Mr. Rockwood: I offer the photograph in evidence.

(Received in evidence and marked Defendant's Exhibit M.)

By Mr. Rockwood:

Q. You have marked the track on which this accident occurred on Exhibit M by the figures "17"?

A. Yes, sir.

Q. Mr. Jennings, look at this photograph (showing photograph to witness), and please state whether that is a

fair representation of a pair of main driving wheels exactly similar to the driving wheels that are involved in this case?

A. Yes, sir.

Mr. Rockwood: We offer it in evidence.

By Mr. O'Neill:

Q. Well, on the point as to whether they are exactly similar. Were these particular ones photographed on this track, to your knowledge?

A. No. He says "A fair representation."

By the Court:

Q. Are they the same size?

A. Yes, sir, with the exception there might be a little bit of a difference on the tire tread, but that is just the wear of the tire.

Mr. O'Neill: Well, we object to it, not upon the ground of [fol. 346] the wheels, but upon the ground that they have certain things underneath the wheels as to which there is no evidence, and it is not proper.

Mr. Rockwood: We are not offering them as a picture of the wheels in question.

Mr. O'Neill: Well, we object to it; its effect will be that. Our testimony is that they only had one chock under this wheel, and now they produce a photograph which is different, and that they are not entitled to.

The Court: Well, with the statement to the jury that the two blocks which are underneath the wheels do not purport to represent the blocks or chocks, as they call them, at the time of the accident, but that the photograph is only offered in evidence for the purpose of showing what the size and character of the wheels was, I will allow it in evidence.

Mr. O'Neill: Exception.

(Photograph received in evidence and marked Defendant's Exhibit N.)

By Mr. Rockwood:

Q. Now, I show you another photograph of a pair of wheels and ask you if they are not the same wheels of which Defendant's Exhibit N is a photograph?

A. Yes, sir; they are.

Q. Taken at a different angle, giving a different view of the wheels?

A. Yes, sir.

Mr. Rockwood: We offer that in evidence.

[fol. 347] Mr. O'Neill: Now, we object to this upon the same ground. Here is another one which only accentuates the point.

The Court: I don't believe I can receive that in evidence now because you are attempting by that, as I look at it, to get in evidence something which is your defense in the case, and it doesn't purport to represent it at the time, but it is only a representation gotten up, which you claim indicates the position the plaintiff got into to escape these wheels, and I think on that part it is clearly vicious and should not be allowed in evidence.

Mr. Rockwood: I will withdraw the offer if there is any indication of that.

Mr. O'Neill: They are trying to re-enact the scene and have visual evidence of what they claim.

(Mr. Rockwood shows photograph to Mr. O'Neill.)

Mr. O'Neill: First of all, it is not necessary for that to be in evidence as bearing upon the height. There is no dispute about the height. He knows the height in feet and inches, that can be stated by this witness, and the object, it seems to me, of offering this picture, and if not the object, the effect of it, is to endeavor to have in evidence something by which they can claim to re-enact the scene, where people were, and what they did do, and what they couldn't do, or something of that kind. That is improper. On the [fol. 348] height, there is no dispute about the height. They can testify to how high the wheel was. He knows what the height of the wheel is. He don't have to put in evidence a photograph of two men between two wheels.

The Court: Do you offer it in evidence?

Mr. Rockwood: I offer it in eviednce.

(Court examines photograph.)

The Court: The objection is overruled.

Mr. O'Neill: Exception.

(Photograph received in evidence and marked Defendant's Exhibit O.)

By Mr. Rockwood:

Q. Is that a fair representation of the same wheels that are shown in Defendant's Exhibit N?

A. Yes, sir.

Q. I show you this photograph and ask you if that is a fair representation of an engine of the type of engine 3221 involved in this case?

A. Yes, sir; it is.

By the Court:

Q. They are the same type?

A. Same type; yes, sir. All thirty-two hundreds are L-I class.

Q. That is what you call Santa Fe type, is it?

A. Yes, sir.

Mr. Rockwood: I offer it in evidence.

Mr. O'Neill: No objection.

(Photograph received in evidence and marked Defendant's Exhibit P.)

[fol. 349] Mr. Rockwood: Now, if your Honor please, in order that the jury may get some idea of what we are talking about, I would like to just show them these photographs.

(Photographs in evidence shown to the jury.)

By Mr. Rockwood:

Q. I show you Defendant's Exhibit P and ask you to put a mark on the main driving wheels shown there?

A. This pair right here (witness marks with an X).

Q. Now, Mr. Jennings, can you state from your own measurements or observation the outside diameter of those driving wheels such as are represented in Defendant's Exhibit N?

A. I can give you the diameter of the driving wheels on 3221 at the time, if you wish.

Q. Will you please tell us the diameter of the main driving wheels on engine 3221, being the driving wheels that have been referred to in this case?

A. 62-9/32 at tread.

Mr. O'Neill: Now, that only emphasizes the fact that there was no necessity whatsoever for the introduction of the second picture of the wheels containing the pictures of the men standing inside, and I move to strike it out.

The Court: Motion denied.

Mr. O'Neill: Exception.

By Mr. Rockwood:

Q. And the tread is the part of the wheel that rests on the track, is that right?

A. Yes, sir.

[fol. 350] Q. Now, the rail on track No. 17 in front of the roundhouse is how high?

A. Six inches.

Q. Now, the part that connects the two wheels is called the journal, is it not?

A. Yes, sir.

Q. State the diameter of the journal on this pair of main drivers?

A. Twelve inches original diameter.

Q. And when you specify original diameter you indicate that there may be a slight decrease in that due to wear?

A. Yes, sir; not over a quarter of an inch.

Q. Now, what is the height from the ground to the under side of the journal?

A. 31 9/32 inches.

Q. And the distance between the tracks of track 17 is how much?

A. 52½ inches.

Q. Now, these wheels, when they were rolled from the Whiting Hoist building and across onto the turntable were placed on what track just before the accident occurred?

A. Track 17.

Q. And was there an engine and tender in the roundhouse on that track at that time?

A. There was.

Q. And do you know what the number of that engine and tender was?

A. Yes, sir.

Q. What was it?

A. 3210.

Q. Is that the same type as 3221?

A. Yes, sir.

Q. Now, in one of these exhibits that has been offered here in evidence this morning you recall whether the rear end of a tender like that in the roundhouse is shown?

A. I think it is.

Q. Now, tell the jury, and you can refer to Defendant's Exhibit C and point it out, what there is on the rear end of the tender in the way of a brace or protruding end or what?

A. This is the end sill on the rear of the tender (indicating on Exhibit C).

[fol. 351] Q. And what is that? What is it?

A. That is on the end of the frame, of the tender frame, or inside; it is intrical with the tender frame.

Q. It is part of the tender frame?

A. Yes, sir. The grab irons are connected on both sides of the coupler. The cutting lever is on the top. There is two steps, one on both sides, two steps known as end sill steps. On the under part of the end sill is an opening for the coupler (indicating on Exhibit C).

Q. Well, now, does that end sill project out beyond the line of the back of the tender itself?

A. Yes, sir.

Q. In other words, the tender carries the coal and all that, and it is in a box shape, isn't it?

A. Yes, sir.

Q. And it is the sill that projects out, and is really the projection of the floor of the tender?

A. Yes, sir.

Q. Now, how far out does that project, about?

A. About 13 inches on the end, and then goes out about 18 inches right directly over the coupler.

Q. In the center does it bow out or come out on an angle?

A. Bows out.

Q. And how high is the top of that sill from the ground on engine 3210 or 3221, engine of that type?

A. Fifty-one inches on an average to the rail.

By the Court:

Q. What, the sill?

A. Yes.

Q. From the sill to the ground?
A. To the rail, the top of the rail.

By Mr. Rockwood:

Q. And what is the total height from the sill to the ground?
A. Fifty-seven inches.
[fol. 352] Q. That is, you add six inches for the height of the rail?
A. Yes, sir.

By the Court:

Q. That is the bottom of the sill, is it?
A. That is the top of the sill.
Q. Does that picture show it, Defendant's Exhibit M? (showing witness)?
A. Yes, that shows it a little better. That is the one I had in mind.

By Mr. Rockwood:

Q. How wide is the sill, Mr. Jennings? You are refreshing your recollection now from a memorandum that you made?
A. Yes. This is a measurement that I made.

By the Court:

Q. What is the width of the sill?
A. 10½ inches on the end, across the top, from here to here (indicating on photograph).
Q. That is the vertical distance?
A. No, that is across the top. Now, the vertical distance is 13 inches at the ends and 18 inches in the center.
Q. And the horizontal distance?
A. Then the horizontal distance would be 10½ inches at the ends and 18 in the center.

By Mr. Rockwood:

Q. Now, just hold that up to the jury so they can see it. Now, right in the center of the lower part of that sill what appears?
A. That there is the coupler, known as the rear coupler.

Q. And can you tell how far that coupler extends from [fol. 353] the sill?

A. Eighteen inches from right here (indicating on photograph).

By the Court:

Q. From the inside of the sill or outside of the sill?

A. Outside of the sill, right from the nearest point of the sill.

Q. So that if the sides of the sill rested against those wheels that coupler would project 18 inches inside the wheels, would it?

A. Yes, towards the journal.

Mr. O'Neill: Yes, but I understood when he said out, he said something else. Was it the hole for the coupler? Was the coupler there at the time of the accident?

A. Yes, it was.

Q. What do you mean by the hole for the coupler?

A. The hole is this little slot that you see right here (indicating on photograph), slotted up in the end sill for the coupler to go through.

By Mr. Rockwood:

Q. That is put in when they cast the piece?

A. Yes.

By the Court:

Q. Would it make any difference whether the jaws of the coupler were open or closed?

A. Very little, because the impact would close it anyway.

Q. Well, suppose it was opened, would it project further still out?

A. It would project further out if it was open.

[fol. 354] Q. How many inches?

A. I imagine about three inches.

By Mr. Rockwood:

Q. You mean that is your best estimate?

A. Yes, just an estimate.

By the Court:

Q. So if the jaws were opened they would project 21 inches out beyond the face of the sill?

A. Yes, if anything it would, but in the vicinity of the grab it is on a swivel.

By Mr. Rockwood:

Q. I understand that the sill in the center is broader than it is on the ends?

A. Yes, sir.

Q. By how many inches?

A. 7½ inches.

Q. So the distance measured from the two ends of the sill to a line parallel to the end of the coupler would be how many inches?

A. 26¼ inches.

By Mr. O'Neill:

Q. What would project out 26¼ inches?

A. The coupler.

Q. Beyond what?

A. Beyond the end sills at the ends.

By the Court:

Q. The sills go out 26¼ inches?

A. Yes, sir.

Q. And the result of that would be that if the wheels were pressed up against the face of the sill the coupler would shove in towards the journal 26¼ inches.

(No answer.)

[fol. 355] By Mr. O'Neill:

Q. That is the axle, isn't it, the journal?

A. Same thing; yes, sir.

By the Court:

Q. Now, let me ask you this question: So that if a man stood against the center of the journal, and the two wheels were shoved up against the sill, he would have a place to stand there, the difference between 31 9/32nds inches and 26¼ inches, or a little over 5 inches; is that correct?

A. He would have approximately 18 inches from the inside of the wheel to the coupler, and approximately 18 inches from the end sill out, on account of the distance of the wheels apart, which would be about 53 inches.

Mr. O'Neill: I move to strike it out. That isn't the question he is asked at all.

The Court: I will let it stand because I will get my answer.

Q. You say here from measurement, that from the ground up to the face of the journal or axle is 31-9/32nds inches. You say that from the face of the sill to the outside of your coupler is a distance of 26¼ inches?

A. Yes, sir.

Q. Now, if the 2 wheels rested on the face of the sill then the journal would project in between the wheels 26¼ inches, wouldn't it?

A. No, they would——

Q. Well, why wouldn't they?

Mr. Rockwood: Your 31 is measured up this way (indicating).

[fol. 356] By the Court:

Q. Well, then if the 2 wheels were shoved up against the sill the coupler would strike the journal?

A. That is correct.

Q. How high are the top of the rails above the ground?

A. 6 inches.

By Mr. Rockwood:

Q. Now, Mr. Jennings, on the day of this accident to the plaintiff in this case, Mr. Bezue, were you anywhere in the vicinity of the accident?

A. I was, yes, sir.

Q. Where were you standing at the time these things took place?

A. At the turntable.

Q. Who was with you?

A. Mr. Hessberger.

Q. Tell the jury about where the wheels were placed on track 17 with respect to the turntable and the roundhouse.

A. The wheels were placed approximately 10 foot from the rear of the tender of 3210, and approximately 30 foot from the turntable pit on track 17.

Q. When you came there toward track 17 were the wheels then in position or were they being moved, or what?

A. I just stopped for a minute there and spoke to Mr. Hessberger, and watched the turntable being placed in position.

Q. At that time as you stood there did you see the plaintiff in this case, Mr. Bezue?

A. I don't remember.

Q. Did you see anybody around these wheels?

A. I did, yes, sir.

Q. Did you observe whether any men were between the wheels?

A. Not until afterwards.

Q. Who was on the turntable at the time, moving the [fol. 357] turntable?

A. The turntable operator, Thomas White.

Q. You say he was in the act of moving the turntable, moving it to line it up with what track?

Mr. O'Neill: We object to all of these leading questions.

The Witness: Track 17.

The Court: Well, he is leading up to the turntable. I am not worrying over that. When he gets down to the important matter I wont' let him lead. Objection overruled.

By Mr. Rockwood:

Q. About how far away from the wheels were you as you stood there?

A. Approximately 25 feet.

Q. Now, just go on from there, Mr. Jennings, and tell the jury what occurred that you saw and heard yourself.

A. As I stood there and the turntable was being placed in position I heard the wheels moving on the track, and when I turned around I saw that the wheels were moving back towards engine 3210 a little faster than they should, and I hollered "Look out! Look out!" And about that time Mr. Bezue jumped on the top of the journal and fell over backwards on the ground. The four men were holding on the wheels at that time.

Q. Who were the four men?

A. The four men were Mike, Poto, Bezue and Tiernan.

Q. Tiernan was the witness that appeared here last night?

A. Yes.

[fol. 358] Q. We called him Kiernan.

A. Well, Kiernan probably.

Q. Kiernan or Tiernan?

A. Yes.

Q. Same man?

A. Same man, yes, sir.

Q. What did you do after you saw this man fall?

A. We went right over; Mr. Morris was right there handy.

Q. Who was Mr. Morris?

A. He was the assistant hostler, or hostler helper.

Q. By hostler you mean an engineer?

A. In this case he was an ex-engineer.

By the Court:

Q. He wants to know what you mean by hostler?

A. A hostler is the man that moves the engines in and around the engine house, placing them for coal and sand, placing them at the ash-pit, placing them on the turntable, putting them in the house to have the repairs made, moving the engines for the necessary repairs, such as applying side rods, where the engine has to be in a certain position, taking the engines out of the house again and placing them on departure track for the engine house men to oil them up, preparatory to going on the road, where the engine fireman gets them. That is what the hostlers' duties are.

Q. Now, as you saw these wheels moving did you observe what, if anything, Poto did?

A. Yes.

Q. What did he do?

A. He ducked right under the journal.

Q. Describe to the jury what you mean by ducked under the journal.

A. As the journal moved back toward engine 3210, he [fol. 359] held on the journal and went right down under it, let the journal pass right over him.

By the Court:

Q. And let go, and dropped down on his back?
A. Yes, sir.

By Mr. Rockwood:

Q. And did you see the plaintiff in the act, as you say, of climbing up on the journal?
A. Yes.
Q. Will you describe to the jury what you saw?

Mr. O'Neill: I object. He has already said what he saw.
The Court: Objection overruled.

The Witness: I saw the man in a sitting position on the journal.

By Mr. Rockwood:

Q. Which way was he facing?
A. To the best of my recollection he was facing towards me.

By the Court:

Q. Away from the tender of the locomotive?
A. Kind of on an angle as he sat on the journal, on an angle, kind of away from the locomotive, 3210.

By Mr. Rockwood:

Q. Now, at that point on track 17 leading from the turntable to the roundhouse state to the jury whether there is any grade up or down in either direction.
A. The track at pit 17 is approximately level. There is [fol. 360] no grade. It goes right into the engine house from the turntable. The track was in good condition. The cinders was about even with the top of the ties—they might have been some little bit above the cinders.
Q. Now, state to the jury what you did or what you observed done immediately after Morris went up to the plaintiff?
A. He was assisted to a sitting position.
Q. Who was assisted?
A. Mr. Bezue was assisted to a sitting position on a box or can, I just don't remember that part, and I asked him whether or not he wanted to go to a doctor.

Q. What did he say?

A. He stated that he didn't think he did. He thought it would go over in a few minutes.

Q. Did you see him again during the day?

A. I did, yes, sir.

Q. How soon after the accident?

A. I saw him just after our noon hour had expired. Mr. Hessberger came in and said that Bezue was getting worse, and I told him immediately to take him to the company doctor at Walden, and I went right to the Whiting Hoist building with him, and with Mr. Hessberger, and with the assistance of Kiernan, carried Mr. Bezue up to Kiernan's automobile and took him to Walden to the physician. From there he was ordered to the hospital at Middletown, by ambulance.

Q. Now, did you observe what the wheels did when they started to roll, where they ended up?

A. They came against the coupler on engine 3210, just rolled up to it and just hit it lightly and rolled back.

[fol. 361] Cross-examination.

By Mr. O'Neill:

Q. What hit the coupler?

A. The journal.

Q. Now, this man, the Italian, his name is Poto?

A. Yes, sir.

Q. And he is a small man, isn't he, comparatively?

A. Comparatively small man.

Q. Didn't he stand up here the other day?

A. Yes, sir.

Q. Poto, stand up. (Man in courtroom stands up.) That is him?

A. Yes, sir.

Q. You used the expression there that after you heard these wheels coming and you looked around, and after you hollered to look out, that this man Poto ducked under the axle or journal?

A. Yes.

Q. Now, isn't it a fact that instead of ducking under it, which would be going under it that way (indicating), that what he had to do, or what he did do was to let it come and

lay down on his back and let the journal go over him (indicating)?

A. No, he didn't wait that time. He went right down under it.

Q. Went under it forward?

A. No, feet first.

Q. That is what I said.

By the Court:

Q. I thought he grabbed the journal and let it go on over him?

A. He crawled right under it.

By Mr. O'Neill:

Q. Well, what happened is instead of diving under it he quickly caught the journal?

A. Yes.

Q. Slid his feet under, is that right?

A. Yes, sir; that is right.

[fol. 362] Q. And let it come over him. Now, that is what he had to do, and he had to do it very quickly and very fast, didn't he?

A. Why, I wouldn't say so.

Q. Well, didn't he do it quickly?

A. Not so awfully quick.

Q. Didn't you say he did it quickly?

A. No, I didn't say quickly.

Q. Didn't you say he didn't wait for that? What was the expression you used here a minute ago?

A. He didn't wait to get up against the engine, or anything like that. He just merely went right under it.

Q. And then the journal rolled forward and it struck the coupler?

A. Yes.

Q. How far did you say it was away from the coupler when it was standing still?

A. About ten feet.

Q. And how heavy is the counter-weight?

A. I couldn't tell you definitely, exactly.

Q. About?

A. I should imagine about a ton.

By the Court:

Q. Each weigh a ton?
A. Each weigh a ton.

By Mr. O'Neill:

Q. And when it was standing at rest the counter-weight was so placed up near the top and on the side towards the tender, wasn't it?
A. I can't say just exactly where the counter-weight was.
Q. Well, that is the way it rolled, didn't it?
A. Yes, sir.
Q. And that is the way it would roll if the counter-weight was in that position if the chock was removed?
[fol. 363] A. The condition of the counter-weight has got a lot to do with how far the wheels move.
Q. I say if the counter-weight was up near the top but on the side towards the tender and the chock was removed the wheels would roll towards the tender?
A. Yes, it would.
Q. All right. And that is what did happen.
A. But I can't say whether they are near the top or not. I don't know.
Q. I say that is what did happen, they did roll towards the tender?
A. They did roll towards the tender, yes, sir.
Q. Now, this morning did you see Hessberger kick the chock out?
A. I did not.
Q. Did you tell him not to take the chock out?
A. I did not.
Q. You didn't see anybody take the chock out?
A. I did not; no, sir.
Q. Is that what you say?
A. Yes, sir.
Q. You didn't see the wheels start to move?
A. No, sir.
Q. Your statement is you don't know what caused them to move?
A. No, sir.
Q. Which is the tender that you have been talking about here, 3210?

A. This one here is the one we have been talking about (indicating photograph).

Q. Well, now, this 3210 you say is of the same type as the engine in question, 3221?

A. Yes, sir.

Q. And that was on track 17?

A. Yes, sir.

Q. It wasn't on the track as shown in this picture, which is Defendant's Exhibit M, is that right?

A. Yes, sir.

Q. And how far was the tender of 3221, that is, the engine in question, away from the edge of the turntable?

[fol. 364] A. I don't know. 3221 wasn't involved as far as the tender is concerned.

By the Court:

Q. Well, didn't you say the wheels were ten feet away?

A. That is 3210 tender, your Honor, 3210 was on track 17.

Q. Was the engine in question 3210?

A. The tender was 3210, and engine 3221.

By Mr. O'Neill:

Q. The tender of engine 3221, you say, was about 30 feet from the turntable edge?

A. No, the wheels.

By the Court:

Q. That would make it about 40 feet, wouldn't it, from the turntable to the tender?

A. To the edge of the engine housing is 45 feet.

By Mr. O'Neill:

Q. Look at this photograph (showing witness). This track 17 is where the tender was at the time of the accident; is that right?

A. Yes, sir.

Q. And was it at about the position shown over here in the left of the picture?

A. No, it was not; it was out further.

Q. How far?

A. About the edge of the tender; the frame here was at least four feet out here.

Q. About four feet outside the frame as shown on track 17; is that right?

A. Yes, sir.

Q. Now, how far were the wheels away from there?

A. About ten feet.

[fol. 365] Q. And the men were between the tender and the wheels?

A. Yes, sir.

Q. And you were where?

A. I was over here at this side (indicating on photograph).

Q. Now, the circumference of those wheels would be about 193 inches, wouldn't it?

A. It would be 3.1416 times the diameter.

Q. Well, call that 3½. 193 inches, isn't it?

A. Yes, sir.

Q. So those wheels were in such position that less than one complete turn of them would bring the journal up against the coupler; is that right?

A. Just about a full turn.

By the Court:

Q. As a matter of fact, a full turn is a little over 16 feet, isn't it?

A. Yes.

By Mr. O'Neill:

Q. And they were only ten feet away?

A. Yes.

Q. So about ⅝ths, a little more than a half, ⅝ths of a full turn would bring these wheels up against the coupler; is that right?

A. Yes, sir.

Redirect examination.

By Mr. Rockwood:

Q. These counter-balances, they are not directly opposite each other, are they?

A. No, sir, 90 degrees apart, directly opposite the main pins.

Q. Now, the roll of these wheels, if left alone on a level track, is determined by the position of the counter-balances, is it?

A. Yes, sir.

Q. Now, Mr. O'Neill asked you if these wheels were less than a full turn from the coupling. Let me ask you whether [fol. 366] the counter-balances would have to be near the top in order to produce a full turn without external help?

A. They wouldn't go quite a full turn.

Q. The wheels will not roll a full turn of themselves?

A. No, sir; they will not.

Q. Does one counter-balance act as a brake on the other after a certain distance?

A. Yes, sir.

Q. You can't state from observation what position the counter-balances were in before this accident occurred?

A. I cannot.

Q. From your observation of the way the wheels moved can you tell whether or not they were at the end of the run or approximately so when they came in contact with the coupler?

Mr. O'Neill: We object to this.

The Court: I will have to sustain it because it calls for a conclusion. You can ask him as to whether the speed accelerated or slowed up, from which the jury might say.

Mr. O'Neill: We object. He hasn't claimed any such observation. All he said was that it was enough for him to hear them moving.

By Mr. Rockwood:

Q. As you turned around and saw these wheels in motion did you observe the wheels until they came in contact with the coupler, as you have testified?

A. I know that the wheels——

Q. Answer me, whether you saw the wheels when they came in contact with the coupler?

A. I did, I saw them in contact with the coupler.

Q. And had you seen them from the time that you turned [fol. 367] around, as you testified, until they came in contact with the coupler?

A. Yes, sir.

By the Court:

Q. Continuously?
A. Yes, sir.

By Mr. Rockwood:

Q. Now, state whether when they came in contact with the coupler they were rolling fast or slow?
A. They had slowed up as they come to the coupler.

Recross-examination.

By Mr. O'Neill:

Q. Now, these wheels were not, of course, to be moved to the tender at all. They were to be moved in the opposite direction, were they not?
A. Yes, sir.
Q. That is, it was not expected that they would move towards the tender; they were to go the opposite direction, out toward the turntable?
A. Yes, sir.

By the Court:

Q. If they were to be moved toward the tender the men would be on the opposite side, would they not?
A. Yes, sir.
Q. Would be pushing that way?
A. Yes, sir.

(A recess was here taken to 1:45 o'clock P. M.)

[fol. 368] After Recess

Dr. Ellsworth Eliot, Jr., a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. You are a physician and surgeon, sir?
A. Yes, sir.

Q. Practising your profession in the City of New York?

A. Yes, sir.

Q. Will you please state to the jury briefly your professional qualifications?

A. I graduated from the College of Physicians and Surgeons in New York in 1887. Then I interned in New York Hospital on the surgical side, followed by a year abroad, and then an assistant in the Vanderbilt Clinic surgical department, and in the department of anatomy of the College of Physicians and Surgeons. Afterward professor of clinical surgery at different times in the College of Physicians and Surgeons and Cornell Medical School; visiting surgeon for the Presbyterian Hospital in New York City; for 28 years, the first part as assistant visiting surgeon, visiting surgeon to Gouverneur Hospital; for 15 years consulting surgeon in different hospitals in New York, the Gouverneur Hospital, Skin and Cancer Hospital, Mountainside Hospital, New Jersey, White Plains Hospital, Lawrence Hospital in Bronxville, and at present director of surgery in the Knickerbocker Hospital of New York.

Q. And, Doctor, during the war did you practice your profession in connection with the Army?

A. Yes, for a part of the war.

[fol. 369] Q. And what was your experience there, Doctor?

A. I was director of surgery in one of the evacuation hospitals in Chateau Thierry and in the Argonne campaign during 1918.

Q. And you are consulted by the attorneys for the New Haven Railroad in regard to cases of physical injury from time to time?

A. I have been; yes, sir.

Q. Now, Doctor, did you make an examination of the plaintiff in this case, Clarence Bezue?

A. I did.

Q. When and where was that examination made, Doctor?

A. It was about between two and three weeks ago.

Q. And where?

A. At White Plains, in Mr. O'Neill's office.

Q. And you have been here throughout the trial and heard Mr. Bezue testify?

A. I have.

Q. Now, will you state to the jury, Doctor, what you observed as to the plaintiff's physical condition on the occasion of your examination of him?

A. He complained chiefly of difficulty in his back and in his right leg. In his right leg there was evidence of diminished muscle power which bends the ankle upward chiefly, as well as downward toward the ground. He also had an area of loss of feeling on the outer side of the leg, extending from the knee down to the ankle. In this same area there was diminished temperature, the part was distinctly cold to the touch. The calf of the leg was one inch smaller than the calf of the opposite leg. The examination of the thigh showed a normal condition mostly, and apparently showed no presence of numbness or loss of sensation. There was, however, at a point six inches above [fol. 370] the kneecap a half an inch difference in the circumference of the two thighs, the affected leg being the smaller.

Then in the back the patient complained of a point of greatest tenderness over what has been here described as the upper part of the sacrum. This was sensitive to the touch, and the sensitiveness was present from this point upward, gradually decreasing until a point between the shoulder blades was reached, when it disappeared. Downward it extended to the left side over the prominence of the buttock. Besides this tenderness there was rigidity of the spine, that is, the movement in the back was absent. He couldn't bend forward any perceptible distance, he couldn't bend over backward, he couldn't go to one side or to the other, and he couldn't twist around. This was not entirely absent, but any effort on his part to carry out any one of these movements intensified the pain, the tenderness. There was, however, at the time of my examination no rigidity of the muscle- on either side of the spine or the backbone coming down.

Q. Doctor, what do you mean by rigidity of the muscle?

A. Stiffness, contraction from some form of retention, a bulging out from contraction over which the patient has no control.

Q. Such, for instance, as the bulging out of the muscle of your upper arm?

A. When you contract it.

Q. When you contract it that way (indicating)?

A. Yes, sir.

Q. Go ahead, Doctor, please?

A. That was all that I found on examination.

Q. Did you observe whether in the muscles of the region [fol. 371] you have described, in the upper sacrum, there was any spasm?

A. No, as I say—well, the muscle of the upper sacrum—there isn't any muscle at that point. The muscle lies on either side of the vertebral column, extending upward from the level of the sacrum to the neck.

Q. Well, now, Doctor, are you able to state from your observation of these symptoms in this plaintiff with reasonable certainty the cause or origin of these conditions?

A. Yes.

Q. Will you please state to the jury what in your opinion is the origin of these conditions?

A. So far as the leg is concerned, the cause of the trouble is an affection of one of the nerves which, arising from near the level of the sacrum, passes down the leg, dividing into branches until it reaches the toes; not the entire nerve, but one of the nerves—I don't think it is necessary to mention the name unless you want it—which supplies or which passes to the muscles of which this diminished contraction is noted, and which also is responsible for the feeling of the outer part of the leg in which there was loss of sensation.

Q. Now, Doctor, those nerves that feed the muscles that you have described, are they sensory nerves or motor nerves?

A. They are mixed nerves, that is, they not only supply the muscles with ability to contract the muscles, but they also supply the skin with sensation, ability to feel.

Q. Do any of those motor nerves, Doctor, come through the posterior foramenæ of the sacrum?

A. Not those that pass to the lower extremity, only those which pass to the muscles of the back.

Q. Now, were you able to form an opinion with reasonable certainty as to the cause of the half-inch atrophy in [fol. 372] the thigh above the knee that you have described?

A. Well, that I concluded was the result of lack of use. I don't think that I finished with your first question. I

described with reasonable certainty the cause of the leg, but I think I haven't included the back.

Q. Will you proceed, sir?

A. Now, so far as the back is concerned, I think there that the cause of the trouble was the result of the blow which the patient sustained upon this bone, the sacrum, and also upon the nerves which issue from the interior of the spinal canal into the muscles of the back and the overlying skin. These nerves evidently were subjected to the same violence, as the result of which they became inflamed, and as a result of this inflammation the patient suffers from the pain and sensitiveness which I have described.

Q. Now, Doctor, during your experience abroad during the war did you have any experience with injuries to the nerves?

A. Yes, we had a good many injuries to the nerves, both without and in connection with gunshot wounds.

Q. Now, Doctor, is there any regeneration of the nerves?

A. Yes.

Q. Will you describe to the jury what regeneration of the nerves means, Doctor?

A. Well, perhaps it is best seen in cases of nerves that are divided across by a knife, stab wounds. Of the two ends of the nerve, that which lies between the divided nerve and the end of the extremity dies. Those nerve fibres are not capable of becoming revitalized, become alive again. The death is a permanent one. On the other hand, from the part of the nerve that lies between the point of division and the origin of the nerve, again sends down [fol. 373] shoots like the shoots of a vine, or tendrils of a shrub, and these pass down along the dead part of the nerve below the point of division and ultimately take the place of the dead part of the nerve, so that eventually in the course of time the nerve again is capable of resuming its function of vitalizing the muscles and contraction, and also of again establishing normal sensation and normal condition in that part of the nerve that is today without sensation.

Q. Doctor, is knowledge of the nerves in that respect new or is that old?

A. Well, that was a well established fact at the time that I graduated in medicine, and so far as I know it hasn't

been changed since then; and it is borne out by clinical experience.

Q. Now, in the area where you say there is pain and sensitiveness on the plaintiff, state what is the cause of that, if you can, sir.

A. Well, that is the area in the lower part of the back, and I think there that the same inflammation of the nerve or damage to the nerve from the violence has resulted in the increased sensitiveness, and as the nerve, if it does return to normal, comes back the sensitiveness will gradually diminish and abate and the normal sensation of the part will return.

Q. Is there any diminution of the muscular power in the thigh, Doctor?

A. No, no; there is no diminution.

Q. Now, from these symptoms that you have described can you say whether this injury to the nerve is localized?

Mr. O'Neill: Objected to as indefinite and improper.

[fol. 374] The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: It involves one nerve, it is limited to one nerve.

By the Court:

Q. Both the back and the leg?

A. The nerve that goes down to the leg, your Honor, that is, the outer part of the leg.

By Mr. Rockwood:

Q. Now, is the process of regeneration more likely to occur where the injury to the nerve is localized or where it is not localized?

Mr. O'Neill: I object to the "localized." I don't think it has any definite meaning. This doctor don't use that expression. I don't understand such an expression in connection with the situation. I object to the form of it. The doctor says one nerve was injured in the back.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: The more localized, the more likely the process of regeneration to take place.

By the Court:

Q. What do you mean by localized?

A. The more limited the nerve involved or the nerves involved. If a part of the nerve is involved it is more likely to regenerate than where the entire nerve is involved.

[fol. 375] Q. And if only one nerve is involved it is more likely to regenerate than if a dozen were?

A. Yes, that is it exactly, your Honor.

By Mr. Rockwood:

Q. Now, Doctor, this examination, you made was nearly 13 months after the accident, was it not?

A. I should say about 13 months, approximately.

Q. The accident occurred on September 2nd, 1929.

A. The examination was made about a little less than 13 months, in September, 1930.

Q. Can you state, Doctor, with reasonable certainty whether the amount of atrophy in the lower leg that you noticed gave any indication to you, in the light of the time that had elapsed, of whether that atrophy was decreasing or increasing?

Mr. O'Neill: Objected to in form as calling for a pure guess.

(The question was read by the stenographer.)

Mr. O'Neill: He only saw the witness upon one occasion. Now, how can he tell whether it was increasing or decreasing?

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: Well, just from the amount of atrophy I should say that the atrophy was decreasing. With a complete or presence of paralysis one would expect a greater amount of atrophy than I found at the time of the examination, which was an inch.

[fol. 376] By the Court:

Q. But you couldn't tell from the examination whether it was increasing or decreasing?

A. No, your Honor, only judging by the amount, by the degree of atrophy. That was all.

By Mr. Rockwood:

Q. If I understand you, then, Doctor, if the injury to the nerve in the first place had caused a complete death of the nerve you would have expected a greater atrophy at the time of your examination; is that right?

A. That is it. I might qualify that to the extent that in the absence of any action of regeneration.

Q. Then the amount of atrophy that you observed under those conditions would be an indication of a favorable progress of the process of regeneration?

Mr. O'Neill: That is objected to as leading and improper.

The Court: Of course it is leading.

Mr. Rockwood: I withdraw the question.

Q. If the process of regeneration of the nerve in this instance had not set in would you expect a greater or less atrophy than you observed to be present?

Mr. O'Neill: Now, we object to that upon the ground that that is improper in form and expert evidence cannot be given on any such question, because the doctor has not [fol. 377] stated, and of course necessarily we know he cannot state, that regeneration has set in. He has given two possibilities; he says the amount of the atrophy that he finds is less than that which he might expect if the nerve had been destroyed. That is one explanation he gave. And he said then if that isn't what happened, then possibly regeneration has set in.

The Court: The objection will be sustained unless counsel changes the word "Expect" to the words "Will be." If it is so changed, the objection is overruled.

Mr. Rockwood: I accept the amendment.

Mr. O'Neill: I object to it also as improper. It calls for a surmise and speculation. It is not a matter as to which this doctor can give his opinion with reasonable certainty. He don't claim that he can, and I haven't heard him claim that he can give his opinion with reasonable certainty as to such a matter, and I don't think he will. But the question is improper in form. First of all, it said "expect."

The Court: Now we have gotten rid of the "Expect."

Mr. O'Neill: Now you say "Would be."

The Court: "Would be." I will overrule the objection and grant you an exception.

(The question as amended was read by the stenographer.)

Mr. O'Neill: Now you can see from the previous answer this witness has given that he can't possibly answer that with reasonable certainty one way or the other.

[fol. 378] The Court: I am not so sure about that.

Mr. O'Neill: All right. We except.

The Witness: There would be a greater atrophy than I observed, in my opinion.

By Mr. Rockwood:

Q. Then the amount of atrophy that you observed is an indication of what, in your opinion, Doctor?

Mr. O'Neill: Same objection.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: The amount of atrophy, in my opinion, that I observed would be an indication of the probable presence of regeneration going on.

By the Court:

Q. You can't state that with absolute certainty?

A. No, your Honor, you can't state that with absolute certainty; that is perfectly true.

By Mr. Rockwood:

Q. Now, Doctor, will you assume for the purposes of this question the following facts: first, that there is no bony encroachment of the nerves in the sacral region of this plaintiff; second, that there is no pathology of the sacrum present in the last X-rays taken of the plaintiff; that there is a relatively small amount of atrophy; the statement made by the patient in December, 1929, that he was improving; the objective evidence of the doctor who was treating him on an examination that the plaintiff's [fol. 379] muscle strength was improving, and the absence

of a muscular spasm in the back in the region of the injury. Assuming those facts, Doctor, can you state with reasonable certainty that it is more likely than not that the conditions that you have described from which the plaintiff now suffers will clear up?

Mr. O'Neill: That is objected to as——

The Court: That I will sustain because of the latter part of it, which is leading. And there is one thing that you assumed there that I don't know whether is proved, and that is "a relatively small amount of the area of lack of sensation."

Mr. Rockwood: No, I said a relatively small amount of atrophy, sir.

The Court: A relatively small amount of atrophy. Now, is there any proof of a relatively small amount of atrophy? That is all I am bothering about.

Mr. Rockwood: I thought so. I thought this doctor had established that, sir.

The Court: Well, I didn't have it in my mind.

Mr. Rockwood: All right.

The Court: The latter part of the question is wrong; but I would like first to see if you have established your hypothesis, that is all.

Mr. Rockwood: Rather than have any question I will withdraw it.

By Mr. Rockwood:

Q. Doctor, state from your examination the extent of [fol. 380] the atrophy as found by you?

A. The atrophy found by me amounted to the difference of an inch in the two calves, and the difference of a half an inch of the two thighs, six inches above the level of the knee joint.

Q. And that is the extent of the atrophy?

A. That was the extent of the atrophy at the time of my examination in the latter part of September.

The Court: Now, direct your question to that atrophy.

Mr. O'Neill: Well, of course, that part of the question is obviously improper. But the main part of the question is surely wrong; in fact, I never heard such a question asked

in the defense of these cases—"more likely than not." That is surely all wrong.

The Court: That part I sustain.

By Mr. Rockwood:

Q. Will you state, Doctor, if you can with reasonable certainty, what is your opinion as to whether or not these conditions that you have described will clear up?

Mr. O'Neill: I object to it; first of all, he has stated different conditions. He can't have the same kind of opinion with reference to all of them. That is obvious. And "Clear up" is indefinite. And it calls for a guess and surmise and conjecture, and not matter of an opinion.

The Court: Objection overruled.

[fol. 381] Mr. O'Neill: I except.

The Witness: In my opinion, it is more likely to clear up than not.

Mr. O'Neill: Now, I move to strike it out.

The Court: I will strike it out. I don't see any reasonable certainty in that.

Mr. O'Neill: It is just the opposite of reasonable certainty. It shows that it can't be said with reasonable certainty.

The Court: I am ruling in your favor now.

Mr. O'Neill: Yes, sir.

By the Court:

Q. Doctor, from your examination, can you state with reasonable certainty your opinion as to the future progress of this man's injury?

A. Well, I think I can, your Honor.

Q. That won't do. You have got to answer that yes or no.

A. Well, could I ask a question first?

Q. Well, inasmuch as I have propounded one to you, I will let you propound one to me. Go ahead.

A. Well, the question is exactly the definition of reasonable certainty.

Q. Yes. It means can you express an opinion in which you are reasonably certain you are correct.

Mr. O'Neill: Well, if he doesn't know what reasonable certainty means he should not be allowed to answer at all.

The Court: Well, I am trying to enlighten him now:

[fol. 382] Mr. O'Neill: But he ought to know himself.

The Court: Well, sometimes we don't know, so I am not going to be too harsh on him.

The Witness: Yes, I can, under those circumstances.

The Court: Now, go ahead.

Mr. O'Neill: We ask leave to ask a question to find out what he means by reasonable certainty.

The Court: You want to examine him first?

Mr. O'Neill: Yes.

The Court: You may do it.

By Mr. O'Neill:

Q. You seem to believe that there is some doubt as to the meaning of the words "reasonable certainty."

A. Different interpretations I think is possible.

Q. Now, what do you think "reasonable certainty" means?

A. I should say that in my opinion reasonable certainty is that where the preponderance of evidence is such that in all probability the outcome will be such and such an outcome. That is the meaning of reasonable certainty.

Q. Well, you first stated different, that your opinion merely was that it was more likely to be one way than the other. That is what you mean by reasonable certainty, isn't it?

A. Well, that just simply depends upon the preponderance.

Q. No, but that is your working definition of reasonable certainty, isn't it?

A. No, I gave you my definition of reasonable certainty [fol. 383] a moment ago.

Q. No, but I mean when you were giving your answers about this case you were showing us your working definition of reasonable certainty, weren't you, just that it was more probable to occur than not to? Isn't that what you said?

A. Well, that was my interpretation of it at the time. That is what I said, yes.

Q. That is what you were saying?

A. Yes, that is what I was saying.

Q. That is the kind of opinion that you have in this case, isn't it?

A. Well, that isn't an opinion, Mr. O'Neill. In my last answer, after finding out from the Judge and getting his assistance as to reasonable certainty, and stating what my own idea of reasonable certainty was, that on that basis of reasonable certainty my answer was formed.

Q. The extent of your opinion before the explanation about reasonable certainty was just the one that I have stated; isn't that correct?

A. Well, nobody asked about whether it was very much more likely or very much less likely to occur. I should say that reasonable certainty was where it was very much more likely to occur than less likely.

Q. You know the words "reasonable certainty" mean considerably more than "the preponderance of evidence," don't you?

A. Well, I should say——

Q. Reasonable certainty means absolutely certain?

A. No, I wouldn't say that; I would say the great preponderance of it.

[fol. 384] Mr. O'Neill: Well, I object on the ground that it clearly appears from his previous answers that this witness wasn't expressing any reasonable certainty of opinion at all, but something that was more likely than the other.

The Court: Overruled.

Mr. O'Neill: Exception.

(The question was read by the stenographer: "Q. Doctor, from your examination can you state with reasonable certainty your opinion as to the future progress of this man's injury?")

A. Yes.

By Mr. Rockwood:

Q. Doctor, will you state your opinion?

A. My opinion is with reasonable certainty that the process of regeneration will take place.

Q. And what effect will that have upon the plaintiff if it takes place?

Mr. O'Neill: I object. That depends upon the extent of the regeneration.

The Court: Well, I will let you ask there: In your opinion with reasonable certainty, Doctor, can you state within what time this regeneration will take place, and to what extent?

Mr. O'Neill: If it does.

The Court: Yes.

The Witness: So far as time is concerned, your Honor, [fol. 385] it takes usually from 18 months to two years and a half before the process of regeneration is finished. So far as the extent is concerned, it is usually almost the equal of the normal power of muscle contraction; that is, if it is not equal it is almost equal in strength of the condition which the patient normally enjoys.

By the Court:

Q. So that in your opinion in about three years he will be able to go out and play football?

A. Well, I don't know that he ever did play football, your Honor, but he might learn the game.

Q. Well, I know, but you can play football even though you don't know the game?

A. Well, your Honor, I should say that at least he would have the power of kicking the ball with the right leg.

Cross-examination.

By Mr. O'Neill:

Q. These opinions of yours, of course, that you have expressed as to whether there would be regeneration, and the extent of it, you understand of course you may be wrong about that, that your opinion might not be correct?

A. It may not occur.

Q. It may not occur, yes.

A. Yes, that is possible.

By the Court:

Q. Medicine is not an exact science?

A. Perfectly true, your Honor.

By Mr. O'Neill:

Q. And these conditions which you are predicting that [fol. 386] may occur in three years from now, your prediction may not be correct?

A. That is true.

Q. On that question, you know that you are up here merely expressing your expert opinion, is that right, and giving expert opinion evidence?

A. Yes, from my clinical experience—I suppose it is right to put that in.

Mr. O'Neill: I move to strike out everything except "Yes." I didn't ask you what it was from, Doctor, and you are under cross examination. I move to strike out everything except "Yes."

The Court: No, I think I will let it stay in.

Mr. O'Neill: Exception.

By Mr. O'Neill:

Q. And you have been up here four days on this case, Doctor?

A. I think this is only the third day, Mr. O'Neill, I am glad to say.

Q. You were up here Thursday and Friday of last week, and today. That is three days?

A. Three days.

Q. And the first day you were here when the X-ray doctor from Walden didn't show up?

A. No, I wasn't here then when he didn't show up.

Q. The first day, when we adjourned for a week.

A. Well, at all events, Mr. O'Neill, I was here Thursday and Friday of last week, and today. There is no question about that.

Q. And you have been making examinations and testifying for this railroad company, when called by them into cases, for how many years?

A. For about 20 years, Mr. O'Neill.

[fol. 387] Q. And you charge them how much a day for coming to court and giving opinion evidence?

A. Well, it is about at the rate of $25 an hour, according to the length of time.

Q. Didn't you testify on other occasions that it was $250 a day?

A. Well, that, as I say again, depends upon the amount of time from leaving my office up to the time that I return to the office.

Q. Well, without going into the details of it, the other day would you say you must have left your office at what time to be here before ten o'clock?

A. Oh, I left my office at half-past eight.

Q. About half-past eight, and didn't get back until half-past seven?

A. Well, even later than that, Mr. O'Neill—almost missed dinner.

Q. That would be more than $250 a day?

A. Yes, that would be more than $250, yes.

Q. Now, what we call atrophy in plain words is wasting?

A. That is right, Mr. O'Neill.

Q. And you found that this man's calf, his right calf, had wasted, due, in your opinion, to an injury to the nerve in the back or coming from the back—had wasted to the extent of one inch; that is, it was one inch less than the other leg. Is that right?

A. That is right.

Q. And the thigh six inches above the knee, the right thigh, was a half-inch less than the left. Is that right?

A. That is right.

Q. You found out also that this man was a right-sided man or right-handed man, didn't you?

A. I don't think I asked him whether he was right-handed or not, as it was not a condition of the hand but of the foot.

Q. Well, leg. Don't you know that people outside of the hand are frequently more or less developed on one side [fol. 388] than the other?

A. In the legs?

Q. In the legs.

A. No, Mr. O'Neill. Your doctor stated that, but that isn't so. They are always symmetrically developed.

Mr. O'Neill: I object to that and move to strike out "Your doctor said so."

The Court: "Your doctor said so" is stricken out.

By Mr. O'Neill:

Q. Please just answer the questions. You say no, that isn't so?

A. That is not true, no.

Q. Don't you know that people themselves know, particularly of their own bodies, that if they are right-handed people or right-sided people that their right leg is likely to be and usually is bigger than the other?

A. No.

Q. Now, did you express the opinion that it was the injury to the same nerve which caused the wasting of the thigh as to the calf?

A. Oh, no, I didn't say that wasting of the thigh was due to any nerve injury at all, Mr. O'Neill.

Q. Well, I misunderstood you.

A. You misunderstood me. I didn't say that.

Q. Well, the wasting of the calf of the lower leg, was that due to the injury of one nerve, in your opinion?

A. Yes, sir.

Q. And the conditions which you describe as having found in the back itself—And what were they, by the way? What conditions did you find in the back?

A. Would you want the stenographer to read my answer, or would you rather have me give it again?

[fol. 389] Q. Give it again, please?

A. I said that first the patient complained of sensitiveness over the upper part of the sacrum, and that extending from this point upward there was gradually diminishing tenderness as far as a position between the shoulder blades; that the tenderness and sensitiveness extended also below and to the left of the region of the buttocks, that is, of the left buttock. And I stated that the movement in the vertebral column was decidedly diminished, that not only in bending forward, but in bending backward and in bending to one side and in bending to the other and in twisting around that any effort made by the patient, the movement being slight, intensified and brought on the pain.

Q. Now, these conditions in the back that you have just now described, in your opinion they were caused by what?

A. I think that they were due to the trauma and the violence to which the patient was subjected at the time of the accident.

Q. And the fractures of the bones?

A. I didn't say that. I didn't see any X-rays at the time of the examination.

Q. No, but you have seen some since?

A. Only at a distance, Mr. O'Neill.

Q. Only at a distance. You haven't looked at them?

A. Well, casually, yes.

Q. Well, assuming that they show fractures—a fracture of the base of the spinous process of the 5th lumbar and a comminuted fracture of the first two segments of the sacrum, assume that.

Mr. Rockwood: To that I object as an assumption, there not being any proof of that in this case.

[fol. 390] The Court: Your statement of fact is true, but the trouble is that on cross examination you don't have to prove the hypothesis of your question. The proof, however, was that there was a crushing and a comminuted fracture of the shell of the first and second segments of the sacrum.

Mr. O'Neill: He explained what the shell is.

The Court: All right. Now, but you are not limited to the facts; so I will overrule the objection.

By Mr. O'Neill:

Q. Would a fracture of the spinous process of the 5th lumbar and a diffused crushing or comminuted fracture of the shell of the first two segments of the sacrum be a competent cause in your opinion with reference to these conditions you found in the back?

A. It would until it had healed or united.

By the Court:

Q. Until what had healed or united?

A. Until the fracture, your Honor, had joined together; until there was union between the different fragments.

By Mr. O'Neill:

Q. The fractures could heal and nevertheless a residual condition exist from the original injury which would cause these conditions you found in the back?

A. Well, you would have to define the residual condition, Mr. O'Neill.

[fol. 391] Q. Well, such conditions as could be residual from that?

A. Well, if you will specify any residual condition I will be glad to answer it.

Q. You are the doctor. I am not pretending to have any expert knowledge on the subject.

A. I know, Mr. O'Neill, but the question is rather ill-defined. You say "residual condition." I can say this much, and perhaps it will answer your question: that such a trauma as the patient received could easily account for the present condition by the damage to the nerve part as to the fracture. But so far as the residual condition of the fracture is concerned, if union had taken place, assuming that there was a fracture there, I don't think that it would. I think that with the union of a fracture the tenderness disappears.

Q. Now, what I wanted to ask you was this: In your opinion do you say that it was the injury to the same nerve which caused these conditions in the back that you have just testified to, and also the wasting of the calf of the leg, and the inability to move the foot at the ankle in the way you have described?

A. No, Mr. O'Neill, not the same nerve at all.

Q. Not the same nerve?

A. No, no.

Q. So that is two nerves that have been injured?

A. Oh, more than two nerves. I am only referring, so far as the leg is concerned, to the motor nerve; there are other small sensory nerves that come out of the posterior foramenæ to the back.

Q. I think you will find, Doctor, that perhaps we all misunderstood you, because the Judge said the same thing. If we understood you to say that there was only one nerve [fol. 392] injured, we are mistaken; is that right?

A. You are mistaken. Let me clear that up. One nerve, Mr. O'Neill, to the leg I was speaking about when the Judge asked me about the limit of the restriction of the one leg—of the lack of the nerve, motor nerve.

Q. Motor nerve?

A. Motor and sensory. The Judge asked me whether it was a mixed nerve, had it motor fibres in it and sensory fibres in it.

Q. Now, what nerve is that, in your opinion, that was injured that affects the leg?

A. The external popliteal nerve, also called the peroneal, Mr. O'Neill.

Q. Does that go down in the bend of the knee?

A. Well, it comes down in the great sciatic nerve to what is known as the ham, behind the knee, and generally just above the ham the great sciatic nerve divides into two nerves, one the internal popliteal and the other one the external popliteal or peroneal. Now, the external popliteal or peroneal is the nerve that passes down and supplies these muscles that are involved and the area of skin which is involved.

Q. Originally this nerve is what you call the great sciatic nerve?

A. No, part of it.

Q. It is part of it?

A. Yes.

Q. And where on the body is the part of this great sciatic nerve from which this external popliteal comes from?

A. Well, when you say "where on the body," do you mean near the skin, or do you want me to describe the course of the nerve going down?

Q. Yes, describe the course of that nerve.

A. Well, the course of the nerve after the division of the sciatic nerve, the external——

Q. No; before it is divided where does it start from?

[fol. 393] A. I am trying to tell you, Mr. O'Neill. It starts usually from the junction of about the middle of the thigh, sometimes a little higher, sometimes a little lower; sometimes the split takes place way up near the origin of the nerve.

Q. You see, Doctor, you don't understand me. It is my fault, perhaps. You are trying to tell me where it starts to divide.

A. Now, what do you want to know?

Q. I want to know where it begins.

A. That is where it starts to divide is where it begins—same thing.

Q. Now, before that you say is the origin of the nerve?

A. No, I say it is way up here (indicating). Sometimes, Mr. O'Neill, they come down separated; sometimes they come down in one big trunk, the great sciatic nerve. Then usually about the middle of the thigh, this is the normal arrangement, the great sciatic nerve divides into two branches, one the internal popliteal and the other the ex-

ternal popliteal. Now, do you want to know the external popliteal or the peroneal?

Q. Now, where is it located in the back, or coming out of the back; the great sciatic nerve? That is what I want.

A. Oh, the great sciatic nerve comes out of the great sacro-sciatic foramen, below the pyriformis, and then it lies on the quadratus femoris and the——

Q. Where does it come out with reference to the 5th lumbar or the sacrum, now?

A. It doesn't come out of the 5th lumbar at all, Mr. O'Neill. It comes out of the sacrum.

Q. All right. Now, then, it comes out just below the 5th lumbar?

A. Below the 5th lumbar, yes.

[fol. 394] Q. All right. Now, that is plain enough. In other words, the great sciatic nerve comes out of the back at the place where this man was injured?

The Court: Part of it.

By Mr. O'Neill:

Q. Part of it comes out there. Is that right?

A. Yes, I should say that was right.

Q. Now, then, you say ordinarily it goes down then to about the middle of the thigh. Is that right; in one great sheath?

A. Well, that isn't the only branch, you know. That is the main branch of the sacral plexus. Now, I am talking about the origin of the nerve.

Q. Yes.

A. I don't think that either of us can make ourselves particularly understandable, but the point is this——

By the Court:

Q. What you mean to say is that one branch comes out of the sacral and goes down and joins with the other, and then they make a big nerve which branches off again?

A. That is it, your Honor. There are four different nerves that take part in this extensive labyrinth of nerves, and then from this plexus these different nerves shoot down the leg.

By Mr. O'Neill:

Q. Now, the place, you say, this division usually occurs is in the back of the thigh?

A. Yes, Mr. O'Neill.

Q. And then does it go down?

A. Which one now are you talking about?

[fol. 395] Q. The popliteal.

A. There are two of them.

Q. The external popliteal.

A. All right.

Q. Does that go down along the lower or inner side of the leg?

A. No, not the inner side at all.

Q. Which side?

A. The outer side, right next to the biceps tendon. There is biceps in the thigh as well as in the arm.

Q. When I say inner side or lower side I am talking about underneath the knee?

A. Right, underneath the knee, along the inner side, under side of the knee.

Q. As a matter of fact, that is called the popliteal area, isn't that right?

A. No.

Q. Where is the popliteal area?

A. No such thing. There is a popliteal space.

Q. In anatomy you never read of the popliteal area, did you?

A. Only popliteal space is the name that is given to it.

Q. Now, where is this other nerve that you have been talking about here?

A. Well, you designate the nerve and I will tell you, if I can.

Q. You said it was—you mentioned it the same time you mentioned the external popliteal.

A. Internal popliteal?

Q. Peroneal?

A. I said that the peroneal was synonymous with the external popliteal; that is the external popliteal or peroneal nerve.

Q. Now, what nerve was injured, in your opinion, which caused these back conditions?

A. I think that the nerves which issue, not from the plexus, but from the spinal canal through these posterior sacral foramenæ were the ones that were injured, particularly the first and second posterior sacral foramenæ. They form a plexus—there is no name for that plexus, I am thankful to say.

[fol. 396]. Q. And is there any definite name for those nerves?

A. No, they have no definite names, so far as I know. Now, they may have a name; that may have been changed. It is a long time since I studied anatomy.

Q. I won't quarrel with you about the word.

A. We never quarrel, Mr. O'Neill.

Q. So far as the conditions in the back are concerned, you don't suggest that in your opinion it was only one nerve that was injured there?

A. No, Mr. O'Neill.

Q. In your opinion, how many nerves were injured which caused these conditions in the back that you have described?

A. Well, I think probably two, possibly three of the small nerves coming out of these foramenæ.

Dr. ARCHIBALD P. EVANS, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Doctor Evans, you are a physician and surgeon?

A. I am.

Q. Specializing in what branch of medicine?

A. X-ray.

Q. Will you state briefly to the jury, sir, your professional qualifications?

A. I graduated from Columbia College of Physicians and Surgeons in 1905, and served three years' interneship in New York City hospitals. I spent two years at the University of Munich and University of Berlin. I began my study of X-ray work with Professor Reider, who collabo- [fol. 397] rated with Professor Roentgen when he an-

nounced his X-ray discovery as far as medicine was concerned. Beginning the general practice of medicine, I was for 10 years the X-ray department head of the City Hospital, Welfare Island. I was instructor, College of Physicians and Surgeons, in electro-diagnosis, which refers specially to the diagnosis of muscular conditions. At the present time I have charge of the X-ray department of Veterans' Hospital No. 81 in the Bronx, Northport Veterans' Hospital, Kings Park State Hospital, and the Midtown Hospital in New York.

(Witness places shadowbox in position and inserts X-ray films.)

Q. Doctor, I will ask you to look at these four films, being Plaintiff's Exhibits 3-a, b, c and d. Now, Doctor, having examined those, will you state to the jury, drawing your attention to the 5th lumbar and the upper two sacral segments, state whether or not you find any evidence of pathology there of any fracture of those bones?

A. I do not see any evidence of pathological change in the 5th lumbar, either the body, the neurol arch, or the pedicles.

Q. By the pedicle, what do you mean?

A. I mean the articular faucets that join in to fit.

Q. And directing your attention to the spinous process of the 5th lumbar——

A. I mean by the neurol arch the spinous process. I see no changes in the sacral segments, second and third.

Q. Now, Doctor, will you put the other film in the shadowbox and tell the jury what you find? I understand, [fol. 398] Doctor, that you have seen these X-rays before?

A. Yes, sir. I saw them the other day in the court room, and I examined them in my office, too.

Q. All right. Go ahead.

A. This is 3-c.

Q. Can you point out the area of the 5th lumbar?

A. This is the 5th lumbar here (indicating). This is the first piece of the segment, second piece, and the third piece (indicating). They are fused together, making one bone, or grown together, making one bone.

Q. By fusion, is that a normal thing, the fusion of the sacral?

A. That is normal; should take place long before the age of this man, which is probably past 30.

Q. Now, describe to the jury what if any pathology you see or change to the bony structure of these particular parts.

A. I don't see any change to the bony structure, and there is no evidence of injury to the body or spine of the 5th lumbar.

Q. The first and second sacral segments?

A. I see no injury of the first and second sacral segments.

Q. Put the next picture in. (Witness inserts film in shadowbox.-

A. This is a lateral plate, showing the segments down here, 5th, 4th, 3rd lumbar (indicating). This is the large hip bone that you feel on your side, the iliae (indicating). I see no evidence of injury there. That is Exhibit 3-b. The next is 3-a. (Witness inserts another film in the shadowbox.- I see no evidence of pathological change there. This is the 5th lumbar; first, second, third (indicating) sacral segments fused, as I have already stated. This is 3-d. (Witness inserts another film in the shadow-
[fol. 399] box.) It just shows the lower—well, the first portion of the sacrum is cut off, and there is no evidence there of pathology. That is 3-d.

Q. Doctor, will you put these two X-rays, being Plaintiff's Exhibits 10 and 11, put those in the box, and examine those, and then states to the jury whether or not you see any pathology or change in the structure of the 5th lumbar or the first and second sacral segments, indicating any injury to the bone? (Witness puts films in shadowbox.) Go ahead, Doctor, and state what your interpretation is.

A. I see no evidence of pathological change here. As far as I can see, they are identically the same as A, B, C and D that I have just looked at.

Q. Did you hear Dr. Black testify, Doctor?

A. I was here.

Q. Did you hear his testimony?

A. I did.

Q. Did you hear him testify that he had had the plaintiff put his fists under his back or buttocks to hold his back off the table when he took X-ray pictures of it?

A. I did.

Q. What effect, Doctor, would the raising of the back in that way have on the clarity of the picture?

A. It would tend to produce a mussy, foggy place, with a lack of clarity.

Q. Did you hear Dr. Black testify that the objects nearest the plate would be the sharpest defined in the film?

A. I did.

Mr. O'Neill: I object to the form of the question, whether he heard different questions put to the other witness.

The Court: I think the objection is good, Mr. Rock-[fol. 400] wood. I have noticed it before. Instead of summing up the case by reciting what the other doctor testified, ask the direct question. That is the proper way of doing it.

By Mr. Rockwood:

Q. Is that the fact, Doctor, that the objects closest to the plate will be the sharpest on the film?

A. It is.

Q. What is the effect on the reproduction of an object by lifting it off the plate?

The Court: Why, the answer is obvious. It takes it away from the plate and helps destroy the clarity, doesn't it, Doctor?

The Witness: That is it, your Honor.

The Court: That is what he just testified to.

Cross-examination.

By Mr. O'Neill:

Q. You have been asked to testify here with reference to X-ray films taken in May, 1930. And that last one—what date is that?

A. I don't know.

Q. Well, whatever date Dr. Black said. And you have given no testimony with reference to the X-rays which were taken in September at the time of the accident, have you?

A. Not that I know of, no.

Q. Now, you never X-rayed this man or examined this man yourself, did you?

A. I did not.

Q. You are called here merely as an expert witness to give your opinion of such plates that you might be ques-
[fol. 401] tioned about before the jury; is that right?

A. Correct.

Q. And for that service, naturally, of course, being here to testify, to give your expert opinion, you are being paid; is that right?

A. There has been no discussion about it as yet, but I have hopes.

Q. You not only have hopes, you have expectations and intentions to see that you get paid, haven't you?

A. Well——

Q. Now, don't let's waste any time about it.

A. I hope to be paid, Mr. O'Neill, beyond a question of doubt.

By the Court:

Q. Not only hope, but you expect to be paid?

A. Yes.

By Mr. O'Neill:

Q. Well, you intend to see to it that you are paid, don't you?

A. Mr. O'Neill, with twenty years' experience in the practice of medicine I never count anything until I get it.

Q. For instance, how many days are you here this time?

A. This is the third day I have been here, sir.

Q. You come from Long Island, start early in the morning, and you have been here late at night, haven't you?

A. No, not this time.

Q. Well, for instance, you were here Thursday?

A. Yes, sir.

Q. And you had to stay in attendance up here?

A. Oh, you mean stay overnight? I misunderstood you.
[fol. 402] Q. Yes.

A. Yes, I stayed overnight. I thought you referred to the courtroom.

Q. You stayed overnight here and didn't return to your office until when, until Saturday?

A. Saturday morning, yes.

Q. Saturday morning. That is, it took all day Friday, too?

A. Yes, sir.

Q. Now, this is not the first time that you have testified as an expert witness for this railroad, is it?

A. It is the second time.

Q. You testified last May here with reference to X-ray plates in the case of a man named Barrett which I tried against this railroad; is that right?

A. I don't recollect the name, but that is correct.

Q. Now, you were paid for that service, weren't you?

A. I was.

Q. Now, do you know what you charged then for a day coming up to court to give your opinion?

A. $100 and my expenses.

Q. Now, didn't you see something in Exhibit 10 which caused some doubt in your mind?

A. How do you mean, doubt, Mr. O'Neill?

Q. Well, I mean I noticed that you returned to it several times. I am not testifying how you looked, or anything else, but I am asking you.

(Witness places Exhibit 10 in shadowbox.)

Q. Now, show the jury the 5th lumbar. (Witness indicates on Exhibit 10.)

Q. And where is the first segment of the sacrum?

A. There (indicating on Exhibit 10). That is approximate.

[fol. 403] Q. What is that I am now pointing to in the first segment (indicating on Exhibit 10)?

A. That is the root of interior or small spine of the first sacral segment—spinous process I mean by that.

Q. That is at the back, isn't it?

A. That will be on the outer side.

Q. On the outer or rear side?

A. That is right.

Q. Now, don't those first two segments show a lot of callous formation over it?

A. I don't see callous formation, no, Mr. O'Neill.

Q. Don't you see at that point a considerable cloudiness?

A. Yes, it is cloudy and it is hazy. That is due to technical conditions, not pathological conditions.

Q. It is clear above, isn't it; immediately right above it is very clear?

A. Yes, but you aren't X-raying the same bone above as you are there.

Q. And you see that same cloudiness and haziness down in the second segment of the sacrum, don't you?

A. Yes, sir.

Q. Did you say what I showed to you before was the spinous process of the first segment of the sacrum?

A. I misunderstood you to mean that there (indicating). Is that what you mean?

Q. Well, this here (indicating). See what I mean?

A. Right there (indicating). That is just an opening through the bone—it is nothing abnormal.

Q. It is an opening through the bone?

A. Probably for a blood vessel.

[fol. 404] WILLIAM M. DONAHUE, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Mr. Donahue, you are employed by the New York, New Haven and Hartford Railroad?

A. Yes, sir; I am.

Q. And you were here in the courtroom last week when Mr. Kiernan testified?

A. Yes, sir; I was.

Q. Did you hear him testify that you bought and gave him a pint of whiskey?

A. Yes, sir; I heard him testify.

Q. Did you give Mr. Kiernan any whiskey, Mr. Donahue?

A. I did not.

Cross-examination.

By Mr. O'Neill:

Q. Did you buy him any whiskey?

A. No, sir; I didn't.

Q. None?

A. No.

Q. How many times did you see this man?

A. Twice.

Q. Where the first time?

A. 41st Street and 8th Avenue, New York.

Q. What place on 41st Street and 8th Avenue?

A. In the street.

Q. Did you stay on the street with him or did you go some place with him?

A. No, he went into a speakeasy, as they call them in New York, and he bought liquor.

Q. He bought liquor?

A. Yes, sir; after I had given him the subpœna fee and the money.

Q. You met him—where was the speakeasy, where you [fol. 405] were talking to him?

A. What do you mean, where I was talking to him?

Q. You were talking to him out on the street, were you?

A. Yes, sir.

Q. In front of the speakeasy?

A. No, it wasn't; it was down a block from it. I don't know the address.

Q. You don't know the address?

A. I do not.

Q. And was it on 41st Street?

A. Well, I would say it was 41st Street, to the best of my recollection.

Q. Did you meet him on the street?

A. Yes, sir; I did.

Q. By appointment?

A. No, sir; his mother was with me. She found him for me.

Q. And then you gave him some money, did you?

A. I gave him a subpœna, calling for his attendance at court here, and also the usual subpœna fee. That was $5.25.

Q. When was that?

A. The date?

Q. Yes.

A. September 22nd, if I recall right, Monday.

Q. September 22nd?

A. I believe it was; yes, sir.

The Court: I thought the testimony was that the pint in question was given to the witness Kierman at Maybrook. am I wrong in that?

Mr. O'Neill: I don't think he said Maybrook.
The Court: I am wrong then.

By Mr. O'Neill:

Q. Now, did he get any bottle of whiskey with that [fol. 406] money, that you know of?

A. Well, he got whiskey with some money; whether it was the money I gave him for the subpœna fee I don't know.

Q. You waited for him to come out of the speakeasy, did you?

A. I did, I waited outside.

Q. So you say, in effect, that you didn't give him a bottle of whiskey, but you gave him money outside or near a speakeasy, and he went in and with the money he bought a bottle of whiskey. Is that what you say?

A. Yes, sir; I do. I gave him the subpœna fee which called for his attendance in court here.

Q. And he come out with a pint of whiskey, did he?

A. No, sir; he didn't. He didn't have a bottle on him. He told me he had left it in the speakeasy.

Q. And where did you go with him then?

A. He came over to my office.

Q. That is, he came with you to your office where?

A. Grand Central.

Q. What time of day was that?

A. Around eleven o'clock in the morning.

Q. And who was present on that occasion when you were interviewing this man?

A. He was in my office alone.

Q. Nobody was present at any time when you were talking to him?

A. No, sir.

Q. And nobody else talked to him in the office, that you know of?

A. No, sir; not that I know of.

Q. Was that the day that you took the statement from him?

A. Yes, I believe it is.

Q. Well, let me see that statement again. When did you next see him?

A. The following day.

Q. This statement is dated the 22nd day of September, [fol. 407] and you say now you saw him the next day?

A. The following day, yes.

Q. Your subpœna called for his attendance when?

A. 24th of September, I believe, the case was set down for the first time.

Q. For when?

A. 24th of September.

Q. And next day where did you see him?

A. In my office.

Q. Again?

A. Yes.

Q. You talked to him some more? About what?

A. He came in looking for a loan of some money.

Q. Did you talk to him about the case?

A. No, sir; not a word, not one word.

Q. Did you tell him you didn't want him to come to court?

A. No, sir; never told him that.

Q. Did you leave word with his mother that he need not obey the subpœna, need not come to court?

A. I told his mother that——

(The question was read by the stenographer.)

A. Yes, I did say that.

Q. Now, when was that?

A. I believe it was the 23rd, Mr. O'Neill. I am not sure.

Q. And where did his mother live?

A. 551 10th Avenue, New York.

Q. Now, was he under the influence of liquor that day when you brought him to your office to sign the paper?

Mr. Rockwood: Which day?

By Mr. O'Neill:

Q. The only day he signed a paper.

A. No, he was not.

[fol. 408] Q. He wasn't. He wasn't drinking?

A. No, sir. Well, I should say he was drinking, but I walked with him from 42nd Street and Broadway to Grand Central.

Q. He wasn't under the influence of liquor?

A. No, sir.

Q. Did Kiernan tell you then, that day, that at the time of the accident that they waited about five minutes for the turntable to be lined up, and when it was, Jake Hessberger kicked the chock out with his foot? Did he tell you that?

A. I believe he did say that, Mr. O'Neill. If it is in the statement, he said it.

Q. Well, look at it (showing witness).

A. Yes, sir.

Q. And did he tell you that "We did not expect him to do it. He gave us no warning"?

A. Yes, sir; he did. He said that. It is there—he said it; yes.

Q. "When the chock came out the wheels started rolling toward the roundhouse because the counter-balances were on that side." Is that right?

A. That is right.

Q. "We couldn't hold it, so I ducked under the journal and it passed over my head. Bezue tried to jump over." Is that right?

A. That is right.

Q. "And was sitting on top of the journal when it hit the draw-bar of tender standing on the same track and the force of the blow knocked him off and he fell to the ground"?

A. Yes, sir; he said that.

Q. "And he landed on his buttocks"?

A. Yes.

Q. Now, I want to ask you as to whether or not you spoke to this Kiernan's mother? Did you?

A. Yes, I did.

[fol. 409] Q. Did you talk to her about wanting her son to be a witness?

A. Yes, I told her we wanted to subpœna him.

Q. Yes. Well, now, did you tell her as to what you would do or the company would do if he stuck by the company?

A. I told her that if Mr. Kiernan testified or came to court that we would pay his lost time and his expenses.

Q. Did you tell her anything about——

A. I didn't mention about sticking to the company.

Q. Did you say anything in substance to the effect that if he would stick by the company that he would be well taken care of?

A. No, sir. I told her that we would pay his lost time and his expenses, which we pay to every witness who attends court.

Q. Did Mrs. Kiernan, the mother, tell you that this boy had right after the accident told her that he had seen it, and what he knew about it, and that if he didn't come to court and tell the truth about it, tell it just the way it was, because he had claimed it was the foreman's fault, that she would come to court herself about it?

A. No, she never told me that, Mr. O'Neill, never.

Mr. Rockwood: I offer in evidence the statement from which Mr. O'Neill has been examining the witness.

Mr. O'Neill: The whole statement is not competent, obviously, as your Honor will see on the fact of it. If there is any part of it which tends to modify or explain that part which I read, that would be competent, but there are a lot of things in here that have got nothing to do with that.

The Court: Objection sustained.

[fol. 410] Redirect examination.

By Mr. Rockwood:

Q. Mr. Donahue, tell me whether Mr. Kiernan was under the influence of liquor when he came into your office looking for a loan?

A. He was the second time he came in.

Q. Did Mr. Kiernan, in his conversation with you relating to the accident, state to you "A week of two after I had been working there Bezue told me that he had been injured"?

Mr. O'Neill: Now, I object to that. Counsel ought to know better than to ask a question like that. That is perfectly incompetent. It is so erroneous it would be a ground for a mistrial if we asked for it. It is prejudicial.

The Court: In the first place, I don't see that it does any harm at all. In the second place, I don't see that it explains anything that Mr. O'Neill brought out. Therefore, it seems to me I must sustain the objection.

Mr. O'Neill: We take an exception to it even having been asked.

Mr. Rockwood: If your Honor please, I think when Mr. O'Neill brings out on his examination of this witness new

facts about which I made no inquiry at all, as to the taking of any statement—Mr. O'Neill called for the statement from me, he examined this witness on it, he read portions of the statement that he selected and he examined this witness on them. Then it seems to me that I am justified in further examining this witness on the same statement.

[fol. 411] The Court: Well, on the same line relating to the same matter, yes; on an entirely different matter, then I can't agree with you.

Mr. O'Neill: I would think that counsel knows better; but we must take his word for it if he says he didn't know better than that.

Mr. Rockwood: Yes, I plead ignorance. Your Honor will allow me an exception. That is all, Mr. Donahue.

(A recess of 15 minutes was here taken.)

After Recess

JACOB HESSBERGER, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Mr. Hessberger, how old are you?

A. 59.

Q. Where do you live?

A. Maybrook.

Q. You are employed by the New York, New Haven and Hartford Railroad Company as labor foreman?

A. Yes, sir.

Q. Stationed at the Maybrook yard?

A. Yes, sir.

Q. Now, were you in charge of the gang that moved the driving wheels from engine 3221 from the Whiting Hoist over to the roundhouse?

A. Yes, sir.

[fol. 412] Q. After the wheels were put on the turntable and rolled off onto track 17 what did you do, Mr. Hessberger?

A. Blocked them.

Q. Tell the jury what you mean by that.

A. I put a 2-inch block in back of the wheels and in front of it for to hold them from rolling either one way or the other.

Q. One wheel or two wheels?

A. One wheel.

Q. After that what did you do?

A. Walked up towards the turntable.

Q. Who was there?

A. Mr. Jennings.

Q. Now, from that point on, Mr. Hessberger, tell this jury what happened?

A. Well, we walked up there to the turntable, they pulled out 3221 for to roll the wheels off track 17 onto 16, and I walked up to the table to see that the table is spotted so as to come out with the wheels.

Q. What do you mean by "spotted"?

A. Get a spot even with your rails, see.

By the Court:

Q. Properly aligned?

A. Properly aligned.

By Mr. Rockwood:

Q. So that the rails on the turntable and the wheels of the track you wanted to use would be in line?

A. Yes, sir.

Q. Well, go ahead.

A. Well, at that time when we was moving the table I heard Mr. Jennings yell "Look out." I looked around kind of suddenly, quickly like, and I see Mr. Bezue coming over the top of the journal, falling backwards.

Q. And who else was around the wheels at that time?

A. McCoy, Poto and Kiernan.

[fol. 413] Q. And did you see Poto when you turned around?

A. Poto went under the wheels, slid under them like.

Q. And when you blocked the wheels about how far were they from the rear end of the tender 3210?

A. About 10 feet, I should judge.

Q. How far away from the wheels were you standing when you were with Mr. Jennings, as you said?

A. Probably about 30 feet.

Q. On what track were you standing?

A. On track 18, right between 17 and 18.

Q. Did you see the wheels when they first started to move?

A. I did not, no, sir.

Q. Were the wheels blocked when you went up to join Mr. Jennings?

A. Yes, sir.

Q. Did you after that go back near the wheels at all, before they rolled?

A. Not before they rolled, no, sir.

Q. Did you yourself kick any block out from under those wheels?

A. No, sir.

Cross-examination.

By Mr. O'Neill:

Q. So your statement is that you didn't kick out the block, and you were labor foreman right there supervising the job, and you didn't see anybody take the block out?

A. No, sir.

Q. Is that right?

A. Yes, sir.

Q. You saw the block was out though, didn't you?

A. After the wheels moved I saw it was out, yes, sir.

Q. And you saw that it was out there on the side?

A. On the back.

Q. On the back?

A. Yes, sir.

Q. That is, towards the tender. You saw that the block [fol. 414] was out from the rail?

A. Out from under the wheels.

Q. Out from under the wheels, and where with reference to the rail? It was back of the wheel, wasn't it?

A. Yes, sir.

Q. Now, when you saw it when it was out was it outside the rail?

A. Well, I couldn't tell you just whether it was outside or inside, but it was away from the wheels entirely.

Q. You don't know where it was, you didn't look?

A. I didn't look, no.

Q. You never thought about that since, did you, whether it was inside or outside of the rail?

A. No, sir, I did not.

Q. You saw a man was badly hurt, didn't you?

A. I see now, yes.

Q. And the kind of a chock that you had was just a 2-inch piece of wood, was it?

A. Why, a 2-inch stick about 18 inches long, I should judge.

Q. But it was 2 inches thick?

A. 2 inches thick, something like that, yes.

Q. Not a regular chock?

A. No, just a block of wood.

By the Court:

Q. 2 inches thick or 2 inches square?

A. 2 inches thick, and I should judge about 2½ or 3 inches wide.

By Mr. O'Neill:

Q. As it laid behind the wheels which dimension was vertical, up toward the wheel?

A. 2 inches up, 3 inches on the rim.

Q. Now, you have chocks down there in that engine [fol. 415] house and terminal when, instead of being merely a 2-inch piece of board, you have ones that are rounded out (Mr. O'Neill draws a diagram on a piece of paper), like that, so that they will fit under the wheel; is that right (showing diagram to witness)?

A. Well, they have them there, yes.

Q. You have them there?

A. Yes.

Q. And you had them there then?

A. Yes.

Q. Anyhow, you didn't put a chock like that under it, did you?

A. No, sir.

Q. And how high does that kind of a chock go up above the rail?

A. I couldn't tell you anything about that.

Q. Don't you know?

A. I never use them.

Q. You never use it?

A. No, no occasion to.

Q. Have you no idea how high those chocks are, those rounded chocks?

A. No, I do not.

Q. Or how long they are?

A. No, sir.

Q. And you didn't look to see whether or not the chock that you say you put in behind the wheel had been taken out to the right or the left of the rail?

A. No, sir, I did not.

Q. This is track 17 shown here in this Exhibit N, is that correct (showing witness Defendant's Exhibit N)?

A. That is correct, yes, sir.

Q. And you put the chock onto which rail of track 17, the right or the left one as you look at it in the picture?

Q. That there right rail (indicating), or the left rail going in toward the house.

Q. That one (indicating)?

A. Yes, sir.

Q. That is the left rail as you look at the picture?

A. Yes, sir.

Q. And you didn't put any chock under the wheel on the other rail, did you?

A. No, sir.

[fol. 416] Q. You just blocked one side of it?

A. One side of it.

Q. And then only with a 2-inch chock; is that right?

A. Yes, sir.

Q. Then you not seeing it, as you claim, and you saying that you didn't knock it out, you don't know whether or not the wheel went back and rode over the chock, do you?

A. No, I couldn't say that.

Q. You don't know whether it did that?

A. No, sir.

Q. All you know is that you saw it out after the accident?
A. Yes, sir.
Q. Did you see it out after the man was hurt or before?
A. After.
Q. After he was hurt?
A. Yes, sir.
Q. And your statement here is that you didn't knock it out?
A. Yes, sir.
Q. Now, you know that you are the man that is accused of neglect in this case, don't you?
A. I know it.
Q. You knew that from the very beginning, didn't you?
A. Yes, sir.
Q. Did you hear Mr. Jennings say "Don't knock that block out?"
A. No, sir, he didn't say it.
Q. You have told us all that you did there just before the accident and immediately afterwards, is that right?
A. Yes, sir.
Q. You just merely went over and saw that the block was out?
A. Yes, sir.
Q. Didn't look to see which side of the rail it was?
A. No, I didn't.
Q. Or how it come out, or why?
A. No, sir.

[fol. 417] Redirect examination.

By Mr. Rockwood:

Q. When you turned around and looked at these wheels which side of the wheels was Bezue standing on?
A. He was on the left-hand side facing the turn-table, this way (indicating), and this wheel this side (indicating).
Q. That is, the left wheel facing the turn-table?
A. No, it is the right wheel facing the turntable.
Q. The right wheel facing the turntable?
A. Yes, sir.
Q. Which wheel was the block under?
A. On the right wheel facing the turntable.

Q. Had you blocked the wheels on the turntable when you came over?

A. Yes, sir.

Q. Who took the blocks out of the wheels when they came off the turntable?

A. I did.

Recross-examination.

By Mr. O'Neill:

Q. Where do you say you were when the wheels started to roll over?

A. Up at the turntable.

Q. And how far were you from this accident?

A. I was just about 30 feet.

Q. You just went over there, did you?

A. Went over that way to see if the table was lined up with that track.

Q. Well, you knew that the block would be removed later so that the wheels could come back?

A. It would be after I give the permission to move the block, yes, sir.

Q. And your statement is merely that you didn't happen to be looking at the time the thing started?

A. I was not—I was looking at that turntable.

Q. You and the other boss, Jennings, who also didn't [fol. 418] happen to be looking—both bosses didn't happen to be looking at the time the accident happened; is that the idea?

A. I wasn't looking.

Q. Well, were you talking?

A. No, sir.

Q. Unfortunately, you have lost the sight of one of your eyes, have you?

A. Yes, quite some time ago—yes, sir.

Q. Which?

A. The left one.

Q. That is all.

A. I have got a good right one left.

Harold F. McCoy, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. You live where?

A. 65 Fifth Street, Walden.

Q. You are employed by the New York, New Haven and Hartford?

A. I am not now; I was at that time.

Q. You were on September 2nd, 1930?

A. Yes, sir.

Q. Were you one of the gang that was moving this pair of main driving wheels from engine 3221 on the morning of September 2nd, 1929?

A. Yes, sir.

Q. And you assisted in rolling them from the Whiting Hoist shop down across the turntable onto track 17; is that right?

A. Yes, sir.

Q. Now, tell me what happened, Mr. McCoy, from the time those wheels got onto track 17?

A. Well, Jake blocked them, and then I walked away from the wheels and got over on track 17—right on the [fol. 419] under tread, the wheel—and I turned around and was watching the turntable turn with the engine on it, and then after he moved the engine he come back to get the wheels put in under the place where they took the engine out, and I was watching the engine go around that turntable, and I heard Pete holler "Look out," and I turned, and I seen Clarence going over the wheel, over the axle, and this young fellow back here——

Q. Who, Poto; this boy (indicating)?

A. Yes, he was ducking in underneath.

Q. And did you see Mr. Hessberger there at the time?

A. Jake was by Pete.

Q. Pete who?

A. Pete Jennings.

Q. And where were they?

A. Down by the turntable.

Q. And how far away was that from the wheels?

A. It was pretty near the turntable—I don't know how far it was.

Q. And where were the wheels standing then?

A. They were right by the engine, I don't know how far from it.

Q. Did you see Mr, Hessberger just before the wheels started to move?

A. No, I didn't. He was by Pete.

Q. He was by Pete?

A. Yes.

Q. Did you see anybody remove the blocks from those wheels?

A. No, sir.

Q. Did you remove the blocks from those wheels?

A. No, sir.

Cross-examination.

By Mr. O'Neill:

Q. What is your employment now?

A. I am a laborer on the Village of Walden.

Q. What?

A. I am working on the Village of Walden.

[fol. 420] Q. And you weren't looking when these wheels started; is that the idea?

A. No, sir, I was looking at the turntable.

Q. And you don't know how—you didn't see anybody take the block out?

A. No, sir.

Q. Or kick it out?

A. No, sir.

Q. And you don't know whether anybody did take it out?

A. I don't know; I wasn't looking.

Q. You don't know whether or not the wheel rode the block?

A. Maybe it did, I don't know, I didn't notice.

Q. You don't know. All you know is that before the accident, before anything happened, these wheels were standing still there?

A. Yes, sir.

Q. Right by the engine; is that right?

A. Yes, sir.

Q. About 4 or 5 feet away from the engine?

A. About that.

Q. And then the next thing you know you heard somebody holler, and you turned around and the wheels were——

A. —rolling back, yes, sir.
Q. Rolling back.

JOHN NORRIS, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. How old are you?
A. 39, sir.
Q. Where do you live?
A. Maybrook, New York.
Q. Are you employed by the New York, New Haven and Hartford Railroad?
A. Yes, sir.
Q. And were you so employed on September 2nd, 1929?
A. Yes, sir.
[fol. 421] Q. In what capacity?
A. Assistant hostler.
Q. And in the discharge of your duties as assistant hostler did you on the morning of September 2nd, 1929, run the engine, pull the engine 3221 out of the roundhouse?
A. Well, I assisted the other fellow, that is, I made the couplings and fired the engine that was doing the pulling.
Q. And then after that engine had been taken onto the turntable and then off onto another track what did you do?
A. I walked to the end of the table and got ready to put what we call the dog in, it is the catch that holds the rails together when they are lined up.
Q. You got ready to put the dog in?
A. Yes, sir, they call it a dog.
Q. When the turntable is lined up so that the rails of the turntable are in line with the track desired these dogs are put in to fasten the table, is that it?
A. Yes, sir.
Q. In that position?
A. Yes, sir.
Q. Now, at or about the time that you were doing that did you see Mr. Jennings around there?
A. Well, while I was doing that and just when I went to put the dog in I heard Mr. Jennings shout "Look out."

Q. Well, who else did you see around at that time?

Mr. O'Neill: I object. He didn't say he saw anybody else around.

The Court: He may. We will see.

Mr. O'Neill: It is leading—suggesting that he saw somebody else.

The Court: The objection is overruled.

The Witness: I saw some men at the wheels but I don't [fol. 422] know who they were because I was not personally acquainted with many of them.

By Mr. Rockwood:

Q. Did you see Mr. Bezue there that day?

A. I didn't see Mr. Bezue until after Mr. Jennings had shouted, and I walked over to assist him to his feet.

Q. And what did you do then?

A. I helped him to his feet and helped him into the roundhouse and found a seat for him to sit down. I asked him how he felt and if he would be all right, that I had to go out and move that engine.

Q. And that is all you know about this accident?

A. That is all I know.

Mr. O'Neill: No questions.

THOMAS WHITE, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Mr. White, you live where?

A. Montgomery, New York.

Q. And you are employed by the New York, New Haven and Hartford Railroad?

A. Yes, sir.

Q. And you were employed by the railroad on September 2nd, 1929?

A. Yes, sir.

Q. And what were you doing on that day?

A. Operating the turntable.

Q. And did you operate the turntable when engine 3221 [fol. 423] was pulled out of the roundhouse?

A. Yes, sir.

Q. You know Mr. Morris?

A. Yes, sir.

Q. Was he around at that time while you were operating the turntable?

A. Yes, sir.

Q. Now, after you had taken engine 3221 on the turntable what did you do?

A. Why, we lined up for the wheels.

Q. That is, when you say "lined up" you mean you operated the turntable?

A. Operated the table, yes, sir.

Q. And where was Mr. Morris while you were lining up the turntable?

A. I think he was on the table.

Q. And while you were doing that did you see Mr. Jennings and Mr. Hessberger anywhere?

Mr. O'Neill: I object to that as leading and suggestive; and I except to counsel having made that suggestion.

The Court: Objection sustained.

Mr. Rockwood: Excuse me. I was trying to hurry along a little bit.

Mr. O'Neill: I except.

By Mr. Rockwood:

Q. Now, Mr. White, you tell the jury what you saw and what you did and what you heard from the time you started to line up the table for the track on which this pair of wheels was standing?

A. While I was lining up the table I heard somebody holler "Look out," and I was watching my duties, and I looked around and seen Mr. Bezue lying on the ground.

[fol. 424] Q. Had you seen the wheels before that time?

A. Yes, sir.

Mr. Rockwood: That's all.

Mr. O'Neill: No questions.

Raymond B. K. Jennings, a witness for the defendant, being recalled for further examination, testified as follows:

Redirect examination.

By Mr. Brumley:

Q. Mr. Jennings, at the time of this accident about how many men were there at the Maybrook roundhouse and in the other buildings?

A. 193 including everything but inspectors.

Q. And there were how many inspectors?

A. About 10.

Q. Now, was there a house called the machine shop there?

A. There was a room called the machine shop; yes, sir.

Q. Now, I show you Defendant's Exhibit L. Does that machine shop room show in that picture?

A. The outside.

Q. Just the outside?

A. Yes, sir.

Q. And where is it?

A. Right from this jog here (indicating on Exhibit L) to this door.

Q. That is, to the left of the tower in the picture, is it?

A. Yes, sir.

Q. And about how many windows are there in that machine shop room that show on that picture?

A. 16 single windows.

Q. And what is in that room in the way of machinery, [fol. 425] if anything?

A. Kolter plane, power hacksaw, Ebenhart 32-inch shaper, upright drill press, Putnam planer, Watson-Stillman power press, 42-inch coach lathe, Putnam boring mill, 36-inch New Haven lathe, 18-inch New Haven lathe, small Cincinnati shaper, Jones & Lampson turret lathe, Bridgeport grinder, small grinder, 3 South Bend engine lathes; one air hoist, and three overhead tracks or small cranes for handling heavy material, vises, and benches.

Q. And how large is that room, about?

A. I would say it was about 70 foot long by 40 foot wide.

Q. Is it connected with the engine house in any way?

A. It opens right out into the engine house.

Q. And adjoins it?

A. Yes, and in the corner there is a tool room.

Q. Now, do you know whether any of the work done in connection with engine 3221 in August and September,

1929, between August 24th and September 4th, was done in that machine shop room?

A. Yes, sir.

Q. Do you know whether any of the side rods were taken off engine 3221 during that time?

A. Yes, sir.

Q. Were those side rods taken to the machine shop room?

A. Yes, sir.

Q. Now, in connection with Exhibit I, page 2, 1925, reads "Take up slack between engine and tender." Can you state of your own knowledge what was done in connection with that item?

A. No, I can't.

Q. In order to take up slack in tender can you say whether it was necessary to remove the drawbar?

[fol. 426] Mr. O'Neill: I object. It depends on how much slack.

The Court: Objection overruled.

Mr. O'Neill: Exception.

The Witness: If the limit of the wedge had been reached it was.

By the Court:

Q. And if the limit of the wedge had not been reached it wasn't?

A. It wasn't.

By Mr. Brumley:

Q. And you don't know in this particular case whether it was removed or not?

A. Only by record.

Recross-examination.

By Mr. O'Neill:

Q. In this room that you call the Whiting Hoist room that you referred to this morning you stored a lot of road equipment, such as in summer you stored the snowplows, is that right?

A. We have, we have done that, yes, sir.

Q. And they were in this Whiting Hoist room at the time of the accident. That is all.

By the Court:

Q. During this period from August 24th to September 4th where did the locomotives proper remain?

A. In the engine house.

Q. Is that what you call the roundhouse?

A. Yes, roundhouse.

[fol. 427] GIRARDO POTO, a witness for the defendant, being called and sworn, testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Where do you live, Poto?

A. Maybrook, New York.

Q. On September 2nd, 1929, were you employed by the New York, New Haven and Hartford?

A. Yes, sir.

Q. Are you still employed by them?

A. Yes, sir.

Q. Employed as a laborer?

A. Yes, sir.

Q. You work around the yards at Maybrook?

A. Yes, sir.

Q. Were you in this gang that moved these driving wheels of engine 3221 on the morning of September 2nd, 1929?

A. Yes, sir.

Q. Tell the jury in your own way, Poto, what you did from the time the wheels got off the turntable onto track 17 that morning. Now, you just tell the jury what happened in your own way.

A. I don't speak very good English. Push the wheels, see.

Q. How far did you push them on that track?

A. Well, 6 or 7—9 or 10 foot, I don't know.

Q. And then what was done?

A. I don't understand.

Q. Poto, when you were pushing those wheels where were you standing?

A. Left hand.

Q. On the inside or the outside of the wheels?
A. Inside.
Q. Now, after they came off the turntable you pushed them 7 or 8 or 9 or 10 feet; then what did you do?
A. I didn't do nothing.

By the Court:

Q. What was done with the wheels?

(No answer.)

[fol. 428] By Mr. Rockwood:

Q. When you pushed them that far what happened to the wheels? Did you keep on pushing them? Did you understand, Poto?
A. No.
Q. When you pushed them 7 or 8 or 9 feet did you keep on pushing or did you stop?
A. Well, stop.
Q. And when the wheels stopped what was done then? Did you see anything happen?

(No answer.)

Q. Don't you understand?
A. No.

By the Court:

Q. What was done with the wheels when you stopped pushing?

(No answer.)

Mr. Rockwood: Well, let it go.

Q. After you stopped pushing where did you go?

(No answer.)

(The question was read by the stenographer.)

A. Why, I come back.
Q. Come back?
A. After they stop, you know.
Q. Yes.
A. Coming back.

Q. Coming in back of the wheels?
A. Yes.
Q. What do you mean by back, the other side?
A. No, inside.
[fol. 429] Q. Inside. And when you say in back you mean nearer the roundhouse or nearer the turntable?

(The question was read by the stenographer.)

A. The roundhouse.
Q. And who was alongside of you there, or who was with you there by the wheels? Was anybody with you between the wheels?
A. Yes.
Q. Who?
A. Me, Mr. Bezue, Tom Mariano.
Q. Between the wheels, I am talking about. Who was with you between the wheels?

(No answer.)

Mr. O'Neill: Well, now, if he doesn't understand the questions we object to his being examined or testifying, because certainly we will be deprived of the right of cross-examination. This witness has been here for several days and the defendant should have seen to it that an interpreter would be here and available to examine him.

Mr. Rockwood: You can't always anticipate stagefright.

The Court: Well, I am not going to hold you to that. You can work it out your own way. If there is an objection it is overruled.

Mr. O'Neill: I except.

By Mr. Rockwood:

Q. After you changed around in back, Poto, what happened then?
A. Hold the wheel.
[fol. 430] Q. You took hold of the wheel?
A. Yes.
Q. And then what happened?
A. Mr. Bezue.
Q. Yes. What happened? What happened to the wheels?
A. Tom Mariano.

Mr. O'Neill: I object to it. It is perfectly obvious that the man can't be examined this way.

The Court: Objection overruled.
Mr. O'Neill: We except.

By Mr. Rockwood:

Q. Now, Poto, can you tell me what occurred from then on? What happened? You tell me.
A. Well, I don't understand.
Q. You don't know what happened?
A. No.
Q. Don't remember a thing?

(No answer.)

By the Court:

Q. What happened to the wheels? Where did you go?
A. Well, I don't know.

Mr. Rockwood: That is all.
The Court: Cross-examine, Mr. O'Neill.
Mr. O'Neill: No questions.
Mr. Rockwood: The defendant rests.
The Court: Any rebuttal?
Mr. O'Neill: I don't see anything to rebut. Plaintiff rests.
The Court: Both sides rest.

MOTION FOR DIRECTED VERDICT

Mr. O'Neill: And we move for a direction of a verdict in favor of the plaintiff, there being no defense.
[fol. 431] Mr. Brumley: Well, the defendant moves for a direction in its favor on the ground that there has been no proof that the plaintiff was engaged in interstate commerce.
The Court: The motion on that ground is denied.
Mr. Brumley: The defendant excepts to Your Honor's denial of its motion to direct a verdict in its favor.
The defendant then asks affirmatively to go to the jury on the question of interstate commerce upon the facts.
The Court: That is refused, and the Court will state now that it will hold that both the plaintiff and defendant at the time of this accident were engaged in interstate commerce,

and that the locomotive had not been withdrawn from service so as to take it out of the interstate commerce ruling.

Mr. Brumley: Defendant excepts to Your Honor's ruling as just stated, including the ruling that the plaintiff was engaged in interstate commerce. I think that is all.

The Court: Both parties are not asking me to direct a verdict?

Mr. Brumley: On the facts, no. We ask to go to the jury on the facts.

Mr. O'Neill: Well, they might as well know under the Employers' Liability Act the matter of so called contributory negligence, to begin with, is an affirmative defense, and then it is only a partial defense. There must be evidence upon which it is based, and the jury can't be allowed to speculate upon that any more than upon any other issue [fol. 432] as to which the plaintiff has the burden of proof. As to the issue of assumption of risk, there isn't even an acceptable theory of assumption of risk in the case, and there is no defense to the cause of action.

The Court: In any event the defendant certainly has a right to go to the jury on the question of negligence, and that I will so hold.

Now, do I understand that all parties have rested?

Mr. Rockwood: Yes.

Mr. O'Neill: Yes.

The Court: Then the testimony is closed, and you may sum up in the morning, and the case will go to the jury. Court now adjourns until ten o'clock tomorrow morning. Gentlemen, I have warned you before that I would prefer that you did not talk this case over until it is finally submitted to you and you have heard these very able counsel sum up. Don't let anybody talk about the case or talk to you about it in your presence; and if anybody does, I would like to have you report it to the Court.

(An adjournment was here taken to 10:00 A. M. October 10, 1930.)

[fol. 433] SUPREME COURT, PUTNAM COUNTY

Carmel, N. Y., October 10, 1930.

Same appearances.

(Trial continued as per adjournment.)

(Mr. Rockwood summed up the case to the jury on behalf of the defendant.)

(Mr. O'Neill summed up the case to the jury on behalf of the plaintiff.)

(The court then charged the jury as follows:)

CHARGE TO JURY

MACK, J.:

GENTLEMEN: This is not a usual case. The rules in this case vary from the ordinary case which comes before you, and I wish you would keep that in your minds and listen to my charge, and not follow some charges which I have given you in cases where the plaintiff did not have the benefit of the Federal Employers' Liability Act, which changes the rules entirely. So I ask you to eliminate from your minds any other charge, but follow the law which is given to you in this charge.

As I have said to you before, you must take the law as given by the Court, but the facts you will take from your own minds and your own recollection. And while I may give you a resume of what the claims of the parties are, I am only doing that for the purpose of showing you how the law applies; and if I make a mistake on the facts as [fol. 434] I state them, you correct it, because your recollection of the facts is supreme, and not mine; because your problem is the facts and mine is of the law. And when you take the law as I give it and apply it to the facts which you find, then I am sure the result will be an intelligent verdict.

The plaintiff in this case comes into court, and I have held and do hold as a matter of law that at the time of his injury both he and the defendant were engaged in interstate commerce and thereby he became entitled to the benefit of the Federal Employers' Liability Act. The plaintiff states and claims that he was injured through the carelessness of a co-employee; and I charge you as a matter of law that if you find that a co-employee of this plaintiff was careless and negligent and the plaintiff's injuries followed as the result of such carelessness, then the plaintiff is entitled to recover—because in the eyes of the

law the negligence of a co-employee is the negligence of the defendant railroad here, and it must respond in damages for such negligence, providing it is not relieved under the circumstances which I will hereafter relate to you.

The plaintiff says in substance that it was a part of his duties in this Maybrook yard to roll these large wheels. They are admittedly heavy. Someone talked of 12 tons. I am not sure it is proven; but in any event the blocks which are attached to the side of the wheel were admittedly of one ton each. The plaintiff and some other men rolled this set of wheels towards where a locomotive was, it having been taken out of the locomotive to be placed upon a lathe to smooth out and make a perfect circle of the [fol. 435] journal to prevent friction, and it was on its way back to be reinstalled in the engine, this pair of driving wheels with the journal or axle between, when this accident happened. The plaintiff says that it came near where the engine was and it was blocked and left there to await another movement, and that it was blocked with a chock or block of wood which was shoved under the wheel; and these weights on the side of the wheel, being in only one part of the wheel, were raised up so that when it came back the block held it there. And, of course, if the block was removed these ton weights on each side, being up in the air, would necessarily and naturally roll the wheel in the direction of the side which the block was on. The plaintiff says that while he and a small Italian named Poto were between the two wheels, in a position to push when needed, and while there were other men to aid in pushing the wheels, a foreman or a co-employee, without warning and without notice, kicked out this block, as a result of which these locomotive drive wheels rolled towards the plaintiff. While the wheels were within 10 feet of the rear of the tender, and some 25 or 26 inches out from the coupling which projected from the tender—and had the plaintiff stood still, and he was near the center, it would have pushed him up against the coupling—the small Italian, being short went underneath, either dove or laid back and caught hold of the wheel so he dropped in under it, and the plaintiff, being placed in a place of danger by the negligence of the defendant through its employee; if it did happen that way, instead of trying to go under it

tried to get over it, and sat on it, and the impact caused him to lose his balance, whereby he fell upon the surface [fol. 436] of the ground and between the ties, causing injuries for which he now claims damages. And the plaintiff says that it was a negligent act on the part of the defendant in kicking out this block or chock without any warning or notice to him or to the gang that was employed there so that they could have taken the weight jointly of this large set of wheels and no one been injured; and he says that that was a negligent act for which they should respond to him in damages.

Now, negligence has been defined as the doing of something which an ordinarily prudent man would not have done, or the failure to do something which an ordinarily prudent man would have done. And the claim of the plaintiff here is that the kicking out of this block, without notice, without warning, without an opportunity to either get to a place of safety or all get together to receive these wheels, was an act which an ordinarily prudent man would not have done, and it is his claim that that is the negligence for which he is entitled to recover here.

The plaintiff is bound to establish his cause of action and the character of his injuries by the greater weight of evidence, by a preponderance of the evidence. That doesn't mean the greater number of witnesses, but it does mean the evidence which satisfies you as to where the truth really lies—evidence which is the more weighty, the more convincing.

Ordinarily I would charge you that the plaintiff could not recover unless he also established that he was free from negligence. But this case being under the Employers' Liability Act, the burden of proving negligence on [fol. 437] the part of the plaintiff is imposed on the defendant in order to diminish any damages you may find for the plaintiff here; because under the Federal Employers' Liability Act, even though the plaintiff was negligent, that would not defeat his recovery; it would only tend to diminish it to the extent that the amount of his negligence contributed to the entire negligence. And if the defendant established by the greater weight of proof—the burden of proof being on the defendant—that the plaintiff was guilty of some negligence which contributed to

and helped to bring about this accident, then the plaintiff would not recover full damages but only a diminished sum bearing the same relation to the full damage that the negligence attributable to the employer bears to the negligence attributable to both. That is, if you found they were both equally careless, and you found the damages were a dollar, you would reduce the damages 50 per cent, because then the plaintiff would be guilty of 50 per cent of the negligence and the defendant guilty of 50 per cent. Of course, your duty will be to weigh the entire negligence, both of the plaintiff and defendant, if you find any on the part of either, and then apportion it and reduce the entire damage which you find by the amount of the negligence or proportion of the negligence which you find the plaintiff to be guilty of, if you find him to be guilty of any negligence that is established by the defendant by the greater weight of evidence.

The defendant puts in as a defense here that the plaintiff assumed this risk. And it is the law that an employee, that is the plaintiff here, does assume the ordinary risks of [fol. 438] his employment. That is true of every employee. It is also true that he assumes any extraordinary risk known to him and appreciated by him where he continues to go on with his work, knowing and appreciating such risk and danger. It is also true that he assumes the risk of an extraordinary risk or danger so obvious that by the exercise of ordinary care he would have known and appreciated it, and having known and appreciated it be continued in his employment; and where he assumes a risk and assumes a danger, then he could not recover, because, having knowledge of it, or where he should have knowledge of it, or wherever it is an incident of his business, he continues on work with that risk, he is presumed to assume it. Now, just how the defendant claims the plaintiff has assumed the risk here is not entirely clear to me, because if the plaintiff's theory is correct nothing in the evidence shows that he had any right to assume that this co-employee was going to kick out this block; and if it was an obvious danger he certainly could not have known it long enough to get in a place of safety. I don't quite see how the defendant claims that having knowledge of it he continued on to work. But, nevertheless, gentlemen, at the request of

the defendant I am going to submit that to you: If it was the ordinary risk of the business and something that would happen without negligence of a co-employee, if it was a danger which he knew and should have appreciated and a wise man would not have gone on, or if it was an extraordinary danger which he should have known and which would occur without negligence on the part of the defendant, why, of course, everybody assumes those risks and you can't re-[fol. 439] cover for them. Or, if it was not an ordinary incident of the business, but was an obvious danger that he could quit and leave if he wanted to, or if he, seeing it, should have quit and did not, then he could not recover.

But here the plaintiff says "I know nothing about it. Without warning to me or my fellow-workers he kicked this out, and there was nothing for me to assume, because I could not assume that the defendant through my co-employee was going to do this careless or negligent act which occurred in a space of a few seconds."

Now, the defendant does not attempt to explain how the accident actually did happen. The defendant, as it had a right to do, places upon the plaintiff the burden of proving how the accident happened, and the only evidence offered in opposition thereto or to meet that is evidence that the employee named by the plaintiff was not at the place of the accident, and either directly or inferentially, that he did not kick out this block.

Gentlemen, if you find by the greater weight of evidence that the accident occurred by reason of the fact that a co-employee of the plaintiff, without warning, without notice, carelessly and negligently kicked out this block, as the proximate and natural result of which these wheels rolled over on the plaintiff, and that he, having been placed in a place of danger and in an emergency by reason of the negligence of the defendant, sought to escape in the best way which appeared to his mind at that time, and in doing so he received these injuries, he is entitled to recover, even though looking at it now you would think he might have been safer, although he was a tall man, to try to get under [fol. 440] rather than over. If the carelessness of this defendant put him in a place of danger where he had to act in an emergency, and he did act in that and was injured, the defendant is still liable even though you think now that

he would have been better off if he had taken another method or another means of escape. That is the rule of law.

Now, Gentlemen, if you find that the plaintiff was injured through the carelessness and negligence of the defendant you must award him damages unless you find from the evidence that he assumed this risk, in which case your verdict would be no cause of action, or unless you find by the greater weight of evidence that the plaintiff himself was careless and that such carelessness contributed to and helped to bring about this injury, in which case your verdict would be diminished in such proportion as his carelessness contributed to his injury.

If you find that the injuries to the plaintiff were caused solely through the carelessness and negligence of a co-servant and a co-employee of the defendant, then you must award to the plaintiff his full damages. But if you find that the defendant establishes by the greater weight of the evidence that the plaintiff was also careless, then you must put in dollars and cents the extent of the plaintiff's carelessness and take the proportion of the plaintiff's carelessness to the entire carelessness and diminish the amount of the entire damages. For instance, if you find the entire damage to be one dollar, and found the plaintiff's carelessness to be 20 per cent, then you would put down 20 cents [fol. 441] as the diminution of the damages due to the carelessness of the plaintiff, if you found any carelessness on the part of the plaintiff.

Now, Gentlemen, it does appear that as a result of this fall there were certain injuries received to the 5th lumbar vertebra and to the upper segments of the sacral bone; and it does appear beyond contravention that as a result of the same there were injuries to certain nerves of the plaintiff; and it does appear without any contradiction that the plaintiff now is suffering from an injury to a nerve which supplies the lower right foot, as a result of which he is unable to extend or contract the foot. As he walks he can't lift that foot as you or I do, and he is compelled, as he has shown you here, to use a cane or to throw that foot. As an incident to the injury there is a certain loss of sensation in the right calf, there is a certain atrophy of the muscles of the right calf, due as the physi-

cians say to the injury, and also an atrophy or shrinkage of the muscles of the thigh, due, as the physicians for the defendant claim, at least, to lack of use only. In addition to that there was an injury to some nerves which come from the spinal cord, through or out of the spinal column, in the vicinity of the joint between the 5th lumbar vertebra and the sacrum, or down below, and it appears that these nerves either come out through orifices or holes in the bone or between the bone, and it appears by the opinion of all the doctors that some nerves have been injured there, and that these nerves supply both the sensation and the movement of the muscles which control the spinal column in the back, up to the shoulder; and it does appear [fol. 442] without contradiction that at the present time as a result of such injury to these nerves the plaintiff is unable to bend forward or backward, sidewise in either direction, or to twist, and some of the physicians, at least, testified that such movements cause pain and have caused pain. Now, as to the right leg there is a conflict of opinion as to the future. The physicians testifying for the plaintiff say that it is a nerve injury, that there is an atrophy of the nerve itself and that it is permanent and will last as long as he lives. A physician called by the defendant testifies that in his opinion there is a dead portion of this nerve, but that in his opinion the portion of the nerve connected with the spinal column on that end will throw out tendrils or parts which will grow over and eventually take the place of the dead portion and restore the nerve of the right foot. As to any testimony as to what will happen to the nerves which supply the back by this doctor I am not entirely clear, and I am going to leave that to the jury, as to whether there is any evidence on the part of this doctor for the defendant as to what will happen to the nerves which supply the back. The doctors for the plaintiff testify that his whole condition is permanent, that he will be no better, and that as long as he lives he will remain in his present condition.

The plaintiff's age was 31 at the time of the accident. That is important because the expectancy of life of a younger man is longer than a man of more mature years. The American Experience Mortality Table shows that the normal expectancy of life of a man of the age of 31 is 34.6 years. [fol. 443] That is important as bearing upon the question of his length of life, which should be taken into consider-

ation with his earning capacity. It is also important because if you find that these injuries are permanent the plaintiff must while he lives carry on with these injuries.

Gentlemen, it is extremely difficult to fix the amount of the damage, of the injury which the plaintiff must suffer. You must take into consideration, if you find for the plaintiff, his loss of earnings, past and future, the pain and suffering he has been through in the past, and the pain and suffering which from the evidence you will find that he will suffer in the future. You must also compensate him for all of his inability to walk or to sleep, for his inability to do any labor of any kind, and his condition as a whole from now until the end of his days. Now, it is extremely difficult to fix that because no one can be certain how long he may live.. He may live one year and he may live 50 years. This expectation of life is only the normal expectation. It is the duty of you 12 men, if you find for the plaintiff, to put in dollars and cents a sufficient sum of money which will adequately and fully compensate him for all his loss of wages and all that he has suffered and will suffer while he is here.

You also must take into consideration that what you have given you don't spread over the lifetime of the plaintiff; you give it to him in one lump, and that that will draw interest—while if he was working his earnings would come year by year and would not draw interest until he earned them. And you must also take into consideration that no matter what may happen in the future that the sum of money you fix now is the only amount that this plaintiff [fol. 444] can receive, if he receives anything, for this injury.

Now, Gentlemen, again: The plaintiff may recover if you find that the proximate cause of his injuries was the carelessness and negligence of this co-employee, unless the defendant by the greater weight of evidence establishes that he assumed the risk, under the rules which I have given you, or the defendant by the greater weight of evidence establishes to your satisfaction that the plaintiff has been guilty of some negligence which contributed to and helped to bring about his own injuries, in which case you will give to the plaintiff only the proportion of his actual injuries which the negligence of the defendant through its agent, through its employee, bears to the entire negligence.

Now, Gentlemen, I am going to give you some questions. One question which I have been asked to submit by the defendant I have charged already. The questions are these, and I am going to ask you to write your answers and to sign them when you are through and bring them in:

Question No. 1: Did the defendant's negligence proximately cause the injuries to the plaintiff? That you will answer yes or no.

Question No. 2: Were the plaintiff's injuries the result of the ordinary risks of his employment, or an extraordinary risk known to him and appreciated by him and the plaintiff continued in his employment with such knowledge, or an extraordinary risk so obvious that by the exercise of ordinary care he should have known it and appreciated it in time to have discontinued such work had he desired so to do?

[fol. 445] Question 3: What is the plaintiff's total damage? And in fixing that, gentlemen, don't consider contributory negligence at all. What is his total damage, everything?

Question 4: Did the plaintiff's want of care contribute to the happening of the accident? That you will answer yes or no. If your answer to question 4 is yes, then the next question is:

How much do you reduce the damage given in answer to question No. 3 on account thereof? And then, gentlemen, if you will sign that, that will be your answer and that will fix the damages.

Any requests, gentlemen?

REQUESTS TO CHARGE

Mr. Rockwood: If your Honor please, may I first thank you, sir, for the fullness and completeness of the charge, which I know involved the greatest study?

In the protection of my client's interests let me very respectfully, sir, except to those portions of your Honor's charge in which you said that if a co-employee was negligent then the defendant would be liable.

I ask your Honor to charge that the claim here of the plaintiff is that the man Hessberger removed this block,

and if he fails to prove that claim he can recover on no other claim.

Mr. O'Neill: That, of course, is the claim, the one that is being discussed, but the jury have a right to consider all the other possible suggestions that they have made. But we have made no claim except that Mr. Hessberger removed it.

The Court: Don't you think it is safer for you, Mr. O'Neill, for me to charge the request?

Mr. O'Neill: Yes.

The Court: So there will be no question about it, I charge [fol. 446] the jury that if they find that Hessberger did not remove the block or kick out the block from behind the wheel, then the plaintiff can't recover.

Mr. Rockwood: I don't want to except on a question of fact, if your Honor please. I was a little embarrassed by the statement that there were some nerves between the lower lumbar and the upper sacral, and that there were motor nerves all through the muscles of the back.

The Court: What I intended to say was that these nerves came out either between the bones or through orifices in the bones, and that from the spinal column came out both motor and sensory nerves which followed the muscles of the back and which caused this pain in the back up to the shoulders which the plaintiff complains of.

Mr. Rockwood: To which we except.

Mr. O'Neill: In any event, your Honor says to the jury that it is their memory of the evidence that alone controls—nothing else.

The Court: Now, gentlemen, I am stating this entirely from my memory, but you have the memory of 12 instead of one, and if I make a misstatement of fact you correct it.

Mr. Rockwood: Your Honor will permit me to read some requests to charge?

The Court: Why, of course.

Mr. Rockwood: I ask your Honor to charge that the plaintiff assumed the risks of dangers normally incident to his occupation, whether he was actually aware of them or not.

The Court: That is the law.

Mr. Rockwood: I ask your Honor to charge that the plaintiff assumed the risk of dangers not normally incident [fol.] to his occupation, arising out of the failure of

the employer to exercise due care with respect to providing a safe place of work, if the plaintiff became aware of the unsafe place of work and of the risk arising from it.

The Court: I will charge that in your words, but will add to it that if the plaintiff became aware of the unsafe place of work and of the risk arising from it and continued in his work with that knowledge—in other words, if he became aware of that as the block went out but didn't have time to get out and get in a place of safety, then it would not apply. But if he had such knowledge and continued in such work, then he assumed the risk and can't recover for it.

Mr. O'Neill: Well, we except to anything that is being said here upon the assumption of risk, but particularly to that, because it can't possibly be claimed that within that time there would be any opportunity to either assume the risk or quit work or not quit work. I except.

Mr. Rockwood: I ask your Honor to charge that if there was a risk of this nature involved in the use of the kind of block that was used here, that that was a risk which the plaintiff assumed.

The Court: No, I refuse to charge that because there is no proof of any defect or any want of propriety in the block in question. You don't request me to charge that, Mr. O'Neill, do you?

Mr. O'Neill: No. There is no claim, as I understand it, on their part that the kind of block used caused the accident.

The Court: Well, I refuse to charge that and give you an exception, Mr. Rockwood.

Mr. Rockwood: Now, I ask your Honor to charge that [fol. 448] the plaintiff assumed the risk of dangers not normally incident to his occupation, arising out of the failure of the employer to exercise due care with respect to providing a safe place of work, if the risk was so obvious that an ordinarily prudent person under the circumstances would have observed and appreciated it.

The Court: I so charge that, but I will add to it, if the risk was so obvious that an ordinarily prudent person under the circumstances would have observed and appreciated it, and sufficient time was afforded him so that he could either have gone to a place of safety or discontinued that work, he can't recover. But if it is something that occurred in the space of a few seconds, during which time

he would not have opportunity to quit the work or get out and go to some other work, then in that case it doesn't apply.

Mr. Rockwood: Exception.

I ask your Honor to charge that there is no evidence that the defendant was negligent in failing to provide sufficient men to handle the engine wheel.

The Court: That is right. I so charge.

Mr. Rockwood: I ask your Honor to charge that there is no evidence that the defendant was negligent in failing to provide sufficient and competent men to move the wheels.

The Court: That is correct.

Mr. Rockwood: I ask your Honor to charge that there is no evidence that the defendant was negligent in failing to promulgate proper regulations and communicate them to the plaintiff.

The Court: Correct. There is no such claim.

Mr. O'Neill: Now, we except to your Honor submitting [fol. 449] to the jury specific questions of fact as to which they are required to give written answers on the ground that these questions apparently were prepared originally by the defendant, and that prior to the plaintiff's summation the defendant's counsel said nothing about having these questions submitted or that a special verdict was being requested and we had no opportunity to sum up as to the form of the answers, and that under the circumstances the jury may be confused and not give the correct answers in accordance with their findings, and that the form of the questions as drafted by the defendant are likely to confuse the jury. Now, in that regard we urge it is error on their part and error if followed to have submitted specific questions at the end of the Court's charge without the slightest suggestion from anybody theretofore that a jury was to be called upon to answer a questionnaire.

The Court: Now, you do have your exception, and it is only fair to state that the Court intended to submit the questions to the jury because in my opinion it is only proper to know whether they considered contributory negligence, and if so, to what extent they found it. The defendant requested me to submit these questions; the fourth question met my approval, the fifth one didn't and I wrote my own, so the questions as they now go to the jury represent my desire as to their answers and not the defendant's.

Mr. O'Neill: The point of my objection is that prior to my summation or until your Honor charged it there was no intimation to the plaintiff that any questions would be submitted, and we had no opportunity to discuss what the proper and necessary answers were.

[fol. 450] Now, we except, of course, again, as we have before, to any question of contributory negligence or assumption or risk being submitted to the jury and all that you have said in connection with those questions, upon the plaintiff's claim that there is no evidence in connection with these defenses, as to which they bear the burden of proof, upon which any finding could be found of either contributory negligence or assumption of risk.

Now, there is only one other matter, and I think that is the only matter as to which you are partially in error about the facts. You are correct, I think, as far as you stated it. You said something about the wheels being 10 feet away from the tender. Your Honor is correct in saying that Jennings says that, and the plaintiff and the defendant's witness McCoy said in substance that the wheels were only 4 to 6 feet way from the tender when they were standing there and not 10 feet; and anyhow, the jury ought to be controlled by their memory.

The Court: That I will leave to the jury, and I say again that your memory controls, and not mine. I will be perfectly frank, I may have made a mistake on more than one occasion on the facts, but there being 12 of you I think you will get the correct version.

Anything else?

Mr. O'Neill: That is all.

The Court: I forgot to say, and I think I should say it now, that the case has been well tried on both sides, and I feel very much indebted to both counsel for all the courtesies extended to this court.

[fol. 451] Mr. O'Neill: May I ask your Honor to say to this jury that after answering these questions which you have submitted that then they shall find a general verdict, either in favor of the plaintiff for such a sum, or in favor of the defendant?

The Court: I will be glad to add that to these questions. I will say: "Question. What is your general verdict? Answer. For——" and leave it blank.

Mr. Rockwood: I think the jury is perfectly well aware of the fact that this is a formality and not an indication of opinion on your Honor's part, but I respectfully except to submitting to them the general question calling for a general verdict.

The Court: And may I say to you, gentlemen, that the general verdict is the amount of the plaintiff's damage, if you find any damage, reduced by the amount of its contributory negligence, if you find any contributory negligence. In other words, if the damage was one dollar, and the contributory negligence was 20 cents, your answer to the 6th or last question would be 80 cents.

Mr. O'Neill: And if no contributory negligence it isn't to be reduced at all.

The Court: Why, of course not; because if your answer is that there is no contributory negligence, then you don't figure up any, because all you would be figuring is ciphers. And you will understand when I put the answer here "For the——" blank: if it is for the defendant you just put "For the defendant." If it is for the plaintiff you add the amount of his damages.

Counsel has suggested that when I speak of damages I am not intimating or inferring that you are going to find [fol. 452] damages. What I am saying is if you find damages you shall put the amount down so that there will be no question. On the questions of fact you control. Anything the Court may have said does not indicate or intimate that he has any opinion one way or the other. The duty of the Court is to make a fair resume of the facts and give you the rules of law, and you apply the law to the facts as you find them and embody the result of both in your answers to the questions here.

(The jury retired.)

(The jury returned.)

The Court: Gentlemen, have you agreed upon a verdict?

The Foreman: We have.

The Court: And have you answered all the questions?

The Foreman: I think so.

VERDICT

The Court: In answer to question No. 1: Did the defendant's negligence proximately cause the injuries to the plain-

tiff? Your answer is "Yes." Is that correct, gentlemen?

The Jurors: Yes.

The Court: Question 2: Were the plaintiff's injuries the result of the ordinary risks of his employment or an extraordinary risk known to him and appreciated by him and plaintiff continued his employment with such knowledge, or an extraordinary risk so obvious that by the exercise of ordinary care he should have known it and appreciated it in time to have discontinued such work had he desired so to do? And your answer is "No." Is that your answer, gentlemen?

[fol. 453] The Jurors: Yes, sir.

The Court: Question No. 3: What is the plaintiff's total damage? Answer "$60,000." Is that your answer, gentlemen?

The Jurors: Yes.

The Court: Question No. 4: Did the plaintiff's want of care contribute to the happening of the accident? Answer "No". Is that correct?

The Jurors: Yes.

The Court: And your answer to that being "No," Question No. 5 is not answered.

Question 6: What is your general verdict? Answer "For the plaintiff," but you do not give the amount. You are supposed to put the amount there. And I will let you put it in now, if you will.

(The jury retired.)

(The jury returned.)

The Court: Gentlemen, your answer to the sixth question is: Answer. "For the plaintiff, $60,000." Is that your verdict?

The Jurors: Yes.

The Court: And, gentlemen, you have all signed this verdict, and this verdict as signed by you is your verdict?

The Jurors: Yes, sir.

Mr. Rockwood: If your Honor please, I move to set aside the verdict and for a new trial; first, upon the exceptions in the Judge's minutes; second, upon the grounds that the verdict is excessive; third, on the ground that the verdict is contrary to the evidence; fourth, upon the ground that the verdict is against the weight of evidence; fifth,

on the ground that the verdict is contrary to law; and on [fol. 454] all of the other grounds specified in section 549 of the Civil Practice Act and on each of said grounds separately; and on the further ground of the exceptions taken to the ruling on the question of interstate commerce.

The Court: The only question the Court will consider is as to whether the verdict is excessive. In view of the injuries as claimed by the plaintiff, and of the plaintiff's age, the Court does not feel that it should interfere with this verdict. Therefore separately on each motion the motion is denied and exceptions taken, and that applies to each separately.

30 days' stay and 60 days to make a case granted.

[fol. 455] SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT

STIPULATION AS TO EXHIBITS

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the printing of plaintiff's X-ray film, Exhibits Nos. 1, 2, 3, 4, 5, 10 and 11, may be dispensed with, and that the originals thereof, together with plaintiff's original Exhibits Nos. 8 and 9, two braces worn by plaintiff, may be handed up to the Court during the argument of the appeal herein.

Dated New York, December 12, 1930.

Thomas J. O'Neill, Attorney for Plaintiff-Respondent. John M. Gibbons, Attorney for Defendant-Appellant.

[fol. 456] STATEMENT RE PLAINTIFF'S EXHIBITS NOS. 8 AND 9

These exhibits consist of two braces worn by the plaintiff. A detailed description of these braces is found at folio 134 of the case on appeal herein.

PLAINTIFF'S EXHIBIT 13

(Photos opposite)

THE PEOPLE OF THE STATE OF NEW YORK

TO President or other officer of The New York, New Haven and Hartford Railroad Company.

GREETINGS:

WE COMMAND YOU that all business and excuses being laid aside you appear and attend before Hon. John E. Mack, one of the Justices of our Supreme Court at a Trial Term, Part I of the Supreme Court of the State of New York held in and for the County of Putnam at the Putnam County Court House at Carmel, N.Y., on the ~~16th~~ 22nd day of September, 1930, at 10 o'clock in the forenoon to testify and give evidence in a certain action now pending and undetermined in said Court between Clarence Bozue as plaintiff and the New York, New Haven and Hartford Railroad Company as defendant on the part of the plaintiff and bring with you and produce at the time and place aforesaid:

ALL records showing engines by numbers operated by your company in and out of Maybrook, N.Y., for a period of one year previous to September 4, 1929, and records showing what commerce said engines were assigned to and what trains said engines actually hauled from where to where and the kind of commerce carried on by said engines and showing when and where said engines were stabled at Maybrook, N.Y., and what daily work or repairs were made upon them, and how long they remained in Maybrook, and where when at Maybrook said engines were inspected and how often, together with all records showing what year engine No.3221 was purchased by your company and the commerce said engine has been engaged in from the time of purchase to the present date, together with all records showing each and every boiler inspection of said engine made at Maybrook, N.Y., prior to September 4th, 1929, and what work was done on said engine at each boiler inspection together with all records in relation to said engine showing when said engine was sent to Readville, Mass., previous to September 4, 1929, for general repairs within 2 years previous to said date, and what repairs were made upon said engine at Readville, Mass. Also, all records showing what repairs, if any, were made upon said engine at Maybrook, N.Y., at the time of boiler washes and how often said boiler washes were made upon said engine previous to September 4, 1929, and any other records or documents relating to said engine or any other engine operated at Maybrook, N.Y., previous to September 4, 1929, showing the actual hauls in commerce said engine made for a period of 2 years previous to said date, now in your custody, and all other deeds, evidences and writings which you have in your custody or power, concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit FIFTY DOLLARS in addition thereto.

WITNESS, Hon. John E. Mack, one of the Justices of the

said Court, Putnam County Supreme Court of Carmel, N.Y., on the 6th day of September, 1930.

THOMAS J. O'NEILL,
Attorney for Plaintiff,
1 Court Street,
White Plains, N.Y.

To _____ Esq.,
Attorney for _____

Sir:

Please take notice, that the within is a true copy of an _____ duly made and entered in the within entitled action and filed in the office of the Clerk of the within named Court, at his office in the _____ Court House, in the _____ the _____ day _____ 193__

Yours, &c.,
THOMAS J. O'NEILL,
Attorney for Plaintiff,
1 COURT STREET,
White Plains, N. Y.

To _____ Esq.,
Attorney for _____

Please take notice, that the within _____ will be presented for settlement to Hon. _____ one of the Justices of the within named Court at the _____ in the _____ on the _____ day of _____ 193__ at 10 _____ o'clock in the forenoon, or as soon thereafter as counsel can be heard.

_____ 193__

Yours, &c.,
THOMAS J. O'NEILL,
Attorney for Plaintiff,
1 COURT STREET,
White Plains, N. Y.

456-0 = 457

SUPREME Court.
PUTNAM COUNTY

CLARENCE REZUK

Plaintiff

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Defendant

COPY

SUBPOENA DUCES TECUM

THOMAS J. O'NEILL
Attorney for Plaintiff,
1 COURT STREET,
WHITE PLAINS, N. Y.

Due and timely service of a copy of the within _____ is hereby admitted this _____ day of _____ 193__

ATTORNEY FOR _____

New York, 9/8 1932
Served on me this date at 1pm o'clock M
W D Dowling

359

458

Plaintiff's Exhibit 14a

(Photo opposite)

P878 14-a

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

Monthly Report of Work Done on Locomotives at Readville Shop

for Month of October 19 27

No. and Kind of Engine	Engine #3821 L-1 Class J
Boiler	Boiler washed & plugged. Caps & lagging removed. Flues blown out. 5 arch tubes renewed, Back flue sheet patched at R/1 and L/1 arch tubes holes 8 x 12 x 14", 130 flush bushings removed and steel plugs applied, 3 broken tate bolts ren. 4 broken bushings renewed, 135 hollow bolts applied, 238 tate bolts applied, Boiler leaks caulked, tell tale holes opened
Fire Box	
Flues	37-2¼" elect welded flues reset
Test Pressure	235 lbs hydro. 185 lbs steam.
Valves Valves	2 muffled & 1 opened.
Pressure Allowed	185 - 188 - 190
Lagging	36¢ lagging new
Boiler Fittings	Removed and repaired
Cocks, etc.	New blow off cock
Ash Pan	Back section rebuilt. Side wings straightened. New shaker box
Smoke Stack	Ope
Netting	Diaphragm plates and netting all new.
Cylinders	R.bolts/ to frames, faced off.
Pistons	Refitted
Side Valves	4 new bull rings. 8 packing rings, New stem ends.
Lap and Lead	Lead 3/16", Lap 1"
Valve Heads	16 bolts, 2 Keys
Guides	Guides and crossheads relined & bolted
Main Rods	8 F Bushings right and left, 2 wrist pins
Side Rods	3,4 & 5 bushings right & left 2 steel ball bearings, 2 bolts
Link Motion	(Baker) complete overhaul
Eccentrics	
Pumps	2 - 8½" air pumps repaired
Driver Brakes	Overhauled
Injectors	N.N.S. right and left repaired
Steam Pipes	Tested OK
Feed Pipes	Internal feed repaired
Frames	Renewed loose bolts and built up worn places
Driving Wheels	OK
Truck "	Turned
Tender "	4 pr. 33,Forge Steel wheels
Driving Axles	No 1 new, 2,3, & 4 turned
Truck "	Turned
Tender "	4 33 axles
Crank Pins	No 1, 2, 3 & 5 right and left renewed, No. 4 left renewed.
Driving Boxes	10 brassed and planed
Springs	2 New springs applied
Shoes and Wedges	8 New shoes & 2 new wedges.
Engine Trucks	Foot straps reprd. Hangers reprd.Swing bolster reprd. New pin
Jaws reprd.New center	pins. Equalizer reprd.New frame reprd.Boxes &Brass new
Cab	Steel cab reprd
Pilot	New
Tender "	New brake beams. New brake levers & pins. New brake shoes
Trk framed reprd.2	new brasses.Bolster welded.New curve plank,Barco equip reprd
Hose,pipe air cyl	reprd.Coupler reprd.Steps reprd.Tank valves reprd.Steps repd.
Painting.	Painted and lettered
Tires, Turned or New	Turned 10 Tires
Maker's Name	Latrobe
Thick after Turn	2 3/4"
Number of	
Position of	
Date Taken in Shop	9- 2-27
Turned out	10-11-27
Total Cost of Labor	
" " Material	
Old Material Credited	
Total Cost Repairs	

Tank: Patch plate back coal pit sheet.Splash plates repd & old rivets renewed. Stoker deck plates & slide plates renewed. Old rivets top and bottom renewed.Welded patch right side. Old rivets in coping renewed.Filling hole cover & hinges reprd. Bottom coal doors renewed. Tool boxes and slides reprd. Oil tank hooks applied, Tank tested for cracks etc.

8 new collars brazed. 1 Check pipe, heating pipe & regulating pipe reprd. 1 new feed water check pipe appl. 1 New feed water suction pipe applied. Oil gauge &governor pipes applied. Boiler jackets repairs. 18 new sheets applied. Cylinder jackets reprd.

Electrical equip complete overhaul

Master Mechanic

458-a = 459

460

Plaintiff's Exhibit 14b

(Photo opposite)

Form 197 — THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

Monthly Report of Work Done on Locomotives at Readville Shop

for Month of March 1929

Dr. and Cr. of Engine	Engine #3821 L-1-a Class #8
Boiler	Boiler washed, sealed and plugged, Caps and lagging removed, New firebox 3 syphons applied, New front flue sheet appl, Both check valves relocated, Waist sheet liners appl to 1st, 2nd barrel courses as per print P-14300, Liner appl to water side of throat sheet, 5 braces appl to bottom of front flue sheet, Steel plugs appl to old arch plug holes on back head and throat
Fire Box	sheet, Boiler pressure changed from 185 to 200 lbs, Cleveland low water
	alarm appl, 2 soot blower sleeves appl, 2 stoker sleeves appl, 148 rigid
	radials ren and 148 tate radials appl, 140 steel plugs appl, 140 fall's hollows
Flues	bolts ren, 160 bushings ren, 983 rivets appl, Mud ring corners elect welded
	Boiler leaks caulked, tell tale holes opened, 242-2½" and 82-5½" elect welded
Test Pressure	250 lbs hydro and 200 lbs steam flues reset
Safety Valves	2-5½" muffled and 1 - 3½" open repaired
Pressure Allowed	188 - 185 - 190
Lagging	40% Lagging new, Lagging jackets appl, 36 sheets iron
Boiler Fittings	Boiler fittings rep'd and rebolted, Air reservoirs removed, hammer and hydro tested, Air brake cyl cleaned rep'd and
Cocks, etc.	Repaired tested
Ash Pan	Deep talmage back pan rebuilt, front section rep, 2 new back
Smoke Stack	OK, New extension (side wings, new front wing, drop
Netting	All new (doors repaired
Cylinders	R renewed, L rebolted and rebored for bushing, Cyl bushing new
Pistons	New on right and left
Side Valves	General overhauling, stems ground
Lap and Lead	Lead on forward motion 3/16", Lap 1"
Cross Heads	16 bolts, 2 keys, 4 new Bronze shoes
Guides	Lined and bolted
Main Rods	BP Bushings on R&L, 2 Wrist pins on left
Side Rods	#2,3,4,5 Bushings new on R&L, F Brass on R, 6 K Pins on L
Link Motion	Valve motion overhauled
Eccentrics	----------
Pumps	Repaired
Driver Brakes	Brake rigging overhauled and repaired
Injectors	Injector repaired on right
Steam Pipes	Steam pipes rebolted and ground tested
Feed Pipes	Steam pipe to air pump new, all other feed pipes rep'd
Frames	Renew loose bolts on front and main frames
Driving Wheels	OK
Truck "	Turned
Tender "	4 pr, SK 36 - 6 x 11
Driving Axles	OK
Truck "	Turned
Tender "	4 SK Axles
Crank Pins	New on right and left on #1,#2,#4,#5, Ground on R&L #3
Driving Boxes	10 Brassed and planed, Journals all turned
Springs	Spring rigging repaired and applied.
Shoes and Wedges	10 New wedges, shoes and floaters refitted, Binders refitted and 6 new bolts, Beam fittings repaired and rebolted
Engine Trucks	New engine truck brasses, Wheels and axles turned, frame
" "	trammed and repaired
Cab	Steel cab repaired
Pilot	Repaired and applied
Tender	8 New brasses, 1 New bolster, New Center plates, New brake bar, New Safety bars, New Drawbar pins, New water hose,
	Side bearings adjusted
Painting	Painted and lettered complete, "NEW HAVEN" painted on sides of tank
Tires, Turned or New	10 New
" Maker's Name	Ehtrobe
" Thick's after Turn's	3 1/2" thick, 56" diam
" Numbers of	
" Position of	
Date Taken in Shop	8-15-29
" Turned out	3-27-29
Total Cost of Labor	
" " Material	
Old Material Credited	
Total Cost Repairs	

Remarks: Plate on boiler renewed, Coal pit patch renewed, Splash plates renewed, Stoker deck slides renewed, Repaired stoker deck, Rerivet filling hole cover, Tank tested OK
Electrical equipment completely overhauled
Applied 6 steam inj pipes, 1 Water column pipe, 1 Water glass pipe, 14 Gauge and governor pipes, 2 Low water alarm pipes, 1 Feed water suction pipe, 1 Feed water check pipe

[redacted]
Supt of Shops.

460-a = 461

364

462

Plaintiff's Exhibit 14c

(Photo opposite)

Form No. Eff 1.4 c

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

365

Monthly Report of Work Done on Locomotives at / Readville Shop

for Month of July 19 30

No. and Kind of Engine	Engine #3221 L-1-a Class #5
	Boiler washed and plugged, caps removed, 3 syphons bombarded, scale removed and washed, Liners applied both front mud ring corners. 5 rows of staybolts renewed in both side sheets, 523 tate staybolts renewed, 66 hollow staybolts renewed, 36 bushings ream, 42 staybolts in right side sheets. Countersunk and elect welded, 6 Huron washout plugs applied, check valves relocated to top of boiler to Print B-40847. Baffle plate applied, print 23031, Boiler leaks caulked, tell tale holes opened.
Fire Box	
Flues	3 - 2 1/4" elect welded flues reset
Test Pressure	Boiler tested at 250 lbs hydro and 200 lbs steam.
Safety Valves	2 - 3½" muffled and 1 - 3½" open repaired
Pressure Allowed	200 - 203 - 206
Lagging	No new lagging applied
Boiler Fittings	Boiler fittings repaired and rebolted, air reservoirs hammer and hydro tested, air-brake cyls cleaned and repaired
Grates, etc.	OK
Ash Pan	Deep talmage, pan not rem, repd & changed accord. to mod. print
Smoke Stack	OK
Heating	Front end inspected and repaired
Cylinders	Studs and bolts overhauled, faced off, cyl bushings rebored
Pistons	Old rods, old heads brazed half way
Side Valves	4 Bull rings, 8 Packing rings. Seams ref & rolled, 2 keys
Lap and Lead	Lead on forward motion 3/16", Lap 1"
Cross Heads	New heads, New shoes, 16 bolts, 2 keys
Guides	Lined and bolted
Main Rods	BP Bushings R&L, 2 wrist pins on left
Side Rods	#2,3,4,5 bushings, F Brass R&L, 2 Bolts H, 6 K Pins L
Link Motion	Baker motion completely overhauled
Eccentrics	
Pumps	Repaired
Driver Brakes	Brake rigging overhauled and repaired
Injectors	Repacked on left and right
Steam Pipes	Steam pipes tested OK
Feed Pipes	Steam pipe to air pump repaired, all other feed pipes rep'd
Frames	Renewed loose bolts on main and front frames
Driving Wheels	OK
Truck "	Turned
Tender "	4 pr. SH; FS7,36 - 6 x 11
Driving Axles	OK
Truck "	Turned4 SH axles
Tender "	4 SH Axles
Crank Pins	OK
Driving Boxes	10 brassed, plated and milled, 10 new driving box shells
Springs	Bushings applied in spring hangers
Shoes and Wedges	Refitted
Engine Trucks	New Eng. truck brasses. Secondhand boxes. eng. truck equalizer repaired, trailer truck wheels and axles turned
Cab	Steel cab repaired
Pilot	Repaired and rebolted
Tender	New brake shoes, new center plates, new brake bar, safety bar, new drawbar pins, new water hose, side bearings adjusted.
Painting	Painted and lettered
Tires, Turned or New	10 Turned
" Maker's Name	Latrobe
" Thick's after Turn's	2 1/2" thick, 56" diam
" Numbers of	
" Position of	
Date Taken in Shop	6-3-30
" Turned out	7-1-30
Total Cost of Labor	
" " Material	
Old Material Credited	
Total Cost Repairs	
Tank:	Large valve applied, Left side splash plates, stoker deck valves & strainers repaired. Tank tested OK. Electrical equipment repaired. Applied 5 steam inj pipes, 1 water column pipe, 1 water glass pipe, 24 Mech Lub pipes. 1 flange oiler pipe, 18 gauge and governor pipes, 2 low water alarm pipes, 1 feed water suction pipe, 1-feed water check pipe
Remarks	

Master Mechanic

464

Plaintiff's Exhibit 15a

(Photos opposite)

July 16/30

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex 154

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/18 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 2	3220	11:58	Fiske	Thompson	—	1:30a	1:30a	X	X			
2	Local	58		Anthony	Soper	—	2a	2a	X	X			
3	Loc	92		Decker	Wilcox	2:40a	—	—	✓				Tied up
4		3225		Martin	Starks	3:30a		—	✓				" "
5	Pool 5	3211	4:30a	Barnes	Mundorf	—	6:40a	6:40a	X	X			
6	No 3	3315		Sheehan	Crooker	4:30a	—	—	✓				Tied up
7	No 5	3221		Fitzgerald	Williamson	6:55a			✓				" "
8	OB 2	3344		Simpson	Abell	—	8:30a	8:30a	X	X			
9	OB 6	3550		W Barber	Dow	—	9a	9a	X	X			
10	Loc	301				7a	—	7:01a	X	X			Turned
11	951	1596		Pearson	Rendt	7a	—	—	✓				Tied up
12	Erie	3174		Knox		7:40a	—	7:47a	X	X			Turned
13	OW	458				7:45a	—	7:52a	X	X			"
14	Loc	92		Decker	Wilcox	—	10:30a	10:32a	X	X			
15	OB 4	3241		Fisher	Coons	—	10:30a	10:36a	X	X			
16	Erie	3209		Butts	Bacon	—	12:30p	1:30p	X	X			
17	Pool 4	3237		English	Donlon	8:05a	—	—	✓				Tied up
18	OW	451		Wagner	—	8:38a	—	8:43a	X	X			Turned
19	Loc	3245		Detrick	Walsh	8:55a	—	—	✓				Tied up
20	Loc	83		Purcell	Drummer	8:55a	—	—	X				" "
21	Loc	304		Bryson	—	9:15a	—	9:22a	X	X			Turned
22	OW	403		Decker	—	10:15a	—	10:22a	X	X			"
23	OW	3315		Sheehan	Gonzales	—	1p	2p	X	X			
24	Pool 6	3248		Hickey	Purcell	1:37p	—	—	✓				Tied up
25	Pool 1	3236	1:20p	C Holmes	Leary	—	3p	3p	X	X			
26	950	1596		Pearson	Rendt	—	3:35p	3:35p	X	X			
27	Ou 2	3225		Martin	Starks	—	4:30p	4:30p	X	X			
28	Pool 4	3237	3:15p	English	Donlon	—	5:30p	5:30p	X	X			
29	2t	83		Purcell	Simmons	—	5:20p	5:20p	X	X			
30	No 7	3345		Woodin	Hunter	3:00p	—	—	✓				Tied up
31	OW	403		Decker	—	4:10p	—	4:15p	X	X			Turned
32	OW 4	3245	5:30p	Detrick	Walsh	—	5:35p	8:30p	X	X			
33	Ou 2	3221		Rudolph	Newton	—	9p	9p	X	X			
34	Loc	307		Lobb	—	6:55p	—	7p	X	X			Tired & Boys Cleaned
35	Loc	56		Hart	Lobb	7:15p	—	—	X				Tied up
36	Loc	240		Harlow	Brady	7:15p	—	—	✓		1	29	" "
37	Ex	3205		Norris	Bergen	7:20p	—	—	✓				" "
38	Local	290		Season	Lombard	8:15p	—	—	✓				" "
39	No 3	3235		Donovan	Crumbley	8:25p	—	—	9-19				" "
40	1005	3551		Buck	Deacon	9:05p	—	—	9-19				" "
41	Erie	3352		Cuddeback	—	10:05p	—	10:10p	X	X			Turned
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

P = 24
P = 1
W =

JA

Form 1052-D

2

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 15-A-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in this different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-7 1937

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound (Pullman)										
11P	7a	3418	Holmes	Pappas	—	—	—	—	—	—			
7a	3P	3418	Lockhart	Anderson	—	—	—	—	—	—			
3P	11P	3410	Dewhirst	Dann	—	11P	3410 3P	—	—	—	3P		Changed to 3410
			East Bound (Hump)										
12a	7a	3223	Yeckman	Dreicer									
7a	3P	3208	Burnett	Houston	7a	—	—	—	—	2aa			
6P	12N	3208	Heckman	Austin	—	—	—	—	—	—			
			West Bound (Pullman)										
11P	7a	3434	Foley	Hansen	—	12 55a	3434 12 30a	—	—	—			
7a	3P	3434	Mosier	Fish	—	—	—	—	—	—			
3P	11P	3434	Mulligan	Allyard	—	11P	3410 11P	—	—	—	9-18		
			West Bound (Hump)										
5 30a	1 30P	3104	Smith	Pennington	5a	—	—	—	—	1 30 5P			
4P	12N	3208	Abraham	Pinckney	4P	—	—	—	—	12 22 9-18	9-18		
			Mine Run										
7a	3P	3410	Kelly	Hart	7a	—	—	—	—	3410 3P			Changed in yard from 3418
8a	3 30	3223	Ex Dw- Ripley	Reinert	8a	—	—	—	—	—			
3 30	4P	3223	Ripley Ripley Blodgett	Reinert	—	—	—	—	—	4P			E - 2 W - 4 M - 2 8

MID-NIGHT ENGINE SITUATION

A 366-3200-3206-3219-3220

B 554-3202-3216-3229-3419

C 3209-3211-3241-3344-3550-3236

D 3104-3208-3223-3414-3410-3418-3434

Stored None

(7)

465-1

Plaintiff's Ex. 15-A

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/17 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Ard 3	3335	1145P ✓	Donovan	Chandler	-	2	2	X	7			
2	LH	90	—	Jensen	Lightenthal	12 35P	-	-	X				Tied up
3	Z-7	37	1710A ✓	Horn	Getz	—	140A	140A	X	7			
4	EC	306	✓	Burgett		2 55A	-	3A	X	7			Turn
5	Local	290	✓	Lisbon	Lambrech	-	430A	430A	X	7			
6	Pool 11	3200		Gray	Clements	455A	-	-	✓	7 19			Tied up
7	Ard 1	3203		Brown	Jones	515A	-	-	✓				"
8	2103	3323		Bristol	Seeley	515A	-	-	✓				" "
9	2605	3219		Alger	Seavey	545A	-	-	✓				" "
10	Local	303	✓	Bagwell		555A	-	6A	X	7			Turned
11	OB 2	3348	✓	Worden	Wunsch	-	830A	830A	X	7			
12	OB 6	3244	✓	Burr	Foley	-	9A	9A	X	7			
13	951	1596		Pearson	Smith	7A	-	-	✓				Tied up
14	Pool 4	3220		Knapp	Thompson	730A	-	-	✓				" "
15	Bay	3247		Glynn	Vosburgh	750A	-	-	✓				" "
16	Local	90	✓	Jensen	Swartzbeck	-	1020A	1020A	X	7			
17	OB 4	3205	✓	Wrenn	Bergen	-	1020A	1020A	X	7			
18	OB 4	3240	✓	Marlow	Maidy	-	1230P	1230P	X	7			
19	Cyc	3157	✓	Kinney	-	950A	-	10A	X	7			Turned + Water
20	Ore	465	✓	Benjamin	-	1040A	-	1030A	X	7			
21	Cor	897		Lapchick	Krueger	1020A	-	-	✓				Tied up
22	Ore	456	✓	Hirst	-	1020A	-	1020A	X	7			Turned
23	Ore	403	✓	Decker		1105A	-	1140A	X	7			"
24	Mb	3323	✓	Bristol	Seeley	-	2P	2P	X	7			
25	Ore	304	✓	Beaford		1140A	-	1145A	X	7			
26	Pool 11	3249	1220P ✓	Ney	Clements	-	3P	3P	X	7			Turned
27	Ore	301	✓	W Jones	-	150P	-	2P	X	7			
28	950	1596	✓	Pearson	Smith	-	350P	350P	X	7			
29	Cor	3203	✓	Brown	C Jones	-	430P	430P	X	7			
30	307	3344		Simpson	Abell	350P	-	-	✓	9 18			Tied up
31	Cor	892	✓	Fischer	Krueger	-	645P	645P	X	7			
32	Ore	403	✗	Decker	-	455P	-	550P	X	7			Turned
33	Eol	3319		Bellis	Bacon	550P	-	-	✓	9-18			Tied up
34	Lne	58		Harding	Piper	550P	-	-	X				" "
35	Ont	3247	620P ✓	Glynn	Vosburg	-	720P	720P	X	7			
36	Ont 2	3207	11 ✓	Alger	Seavey	-	9P	9P	X	7			
37	Enel	3355	✓	Cuddeback	-	710P	-	715P	X	7			Turned
38	Bos	3550		Barber	Gust	730P	-	-	✓				Tied up
39	Ex	3241		Tyler	Coons	830P	-	-	✓	9-18			
40	Lne	307	✗	Goble	-	930P	-	937P	X	7			Turned
41	Pool 5	3211		Benser	Marsden	1040P	-	-	9-18				Tied up
42	Ln 19	306	✗	Buddenser	-	1040P	-	1043P	X	7			Turned
43	Pool 1	3246		Holmes	Leary	1135P	-	-	9-18				Tied up
44													
45													
46													
47													7-46
48													P-1
49													W-0
50													
51													
52													
53													
54													

(15)

465-2

Plaintiffs Ex. 15-A-

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** 9-16- 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL ON HAND	ENGINE TURNED	REMARKS
			East Bound Pullout										
11P	7a	3419	Nelmes	Fish	-	-	-	-	-				
7a	3P	3418	Jenkins	Stewart	-	-	-	-	-			7	Changed in yard for 3419
3P	11P	3419	Doolittle	Davis	-	11[45]	3418 3430	-	-			1	
			East Bound Classify										
12a	8	3213	Hutchinson	Decker	-	-	-	-	-				
7a	3P	3223	Bunnell	Anderson	6[35]	-	-	-	-			1	
8P	1a	3223	Hutchinson	Decker	-	-	-	-	-				
			West Bound Pullout										
11a	7a	3410	Foley	Hamilton	-	1[30]	3434	-	-			1	
7a	3P	3434	Mann	Delaney	-	-	-	-	-				
3P	11P	3434	Mulhearn	Klepeck	-	-	-	-	-				
			West Bound Hump									1	
5[30]	1[30]	3184	Amick	Reasner	5[30]	-	-	-	-				
8P	1a	3104	Abraham	Pinsonneau	-	-	-	-	-		9-17		
			Misc. SW-										
7a	3P	3419	Kelley	White	7a	-	-	-	-			1	Changed in yard for 3418
			Ex. SW-										
8a	2[50]	3410	Ripley	Reinert	8a	-	-	-	-				8-2 4W-2 M-2 6
2[50]	12	3450	Ripley	Reinert	-	-	-	-	-		9-13		

MID-NIGHT ENGINE SITUATION

A 366- 3205- 3225- 3249-

B 654 3207- 3214- 3216- 3229- 3419

C 280- 3206- 3215- 3240- 3244- 3348- ~~3419~~

D 3104- 3208- 3223- 3410- 3418- ~~3419~~ 3434

Stored None

(6)

465-3

Form 1072-C

5

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex 154

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE 9/16 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Prol 1	3236	11:50 P	✓	Holmes	Lustfeg	–	2 E	2 A	X	7			
2	L&N	92			Decker	Woodson	12:35 E	–	–	X				Tied up –
3	Lyme	304			Grayson		12:45 E		12:50 E	X	7			Turn –
4	Prol 4	3248			English	Domenichini	1:30 E	–	–	✓				Tied up –
5	Exp	3210	2:00	✓	Reynolds	Richardson	–	4 E	4 E	X	7			
6	Acl	3225			Dooley	Price	5:35 E	–	–	✓	7 30 P			Tied up.
7	Lyme	56		✓	Bedford	Papes	–	7 E	7 A	X	7			
8	Prol 6	3235			Hickey	Purcell	5:40 E	–	–	✓	9 49 P	9	17	Tied up –
9	LB 2	3245		✓	Donlon	Leary	–	8:30 A	8:30 A	X	7			
10	OB 6	3226		✓	Bacon	Moore	–	9 E	9 A	X	7			
11	951	1596			Pearson	Smith	7 A	–	–	✓				Tied up
12	No 3	3315			Shelton	Beesley	7:20 A	–	–	✓				"
13	L&N	92		✓	Decker	Wilson	–	10:20 A	10:20 A	X	7			
14	OBK	3241		✓	Fisher	Crowe	–	10:30 A	10:30 A	X	7			
15	OBK	3209		✓	Mink	Bacon	–	12:30 P	12:30 P	X	7			
16	Rgt	456		✓	[illegible]	–	8:45 A	–	8:00 A	X	7			Turned
17	L&N	83			Purcell	Trimmer	8:45 A	–	–	X				Tied up
18	Dow	403		✓	Decker	–	10:15 A	–	10:20 A	X	7			Turned
19	Rgt	453		✓	Strechal	–	11:20 A	–	11:25 A	X	7			"
20	Prol 4	3237	11:30	✓	English	Lowenbrotte	–	1 P	1 P	X	7			
21	Prol 6	3248		✓	Hickey	Purcell	–	2 P	2 P	X	7			
22	Erie	3173		✓	Krouse	–	12:47 P	–	12:55 P	X	7			Turned
23	951	1596		✓	Pearson	Smith	–	3:35 P	3:35 P	X	7			
24	OB 6	3315	1:55	✓	Rhenhan	Beesley	–	3:45 P	3:30 P	X	7			
25	Acl	3225		✓	Dooley	Price	–	4:20 P	4:30 P	X	7			
26	Prol 5	3249			Donovan	Rhodes	1:30 P	–	–					Tied up
27	Dow	403		✓	Decker	–	2:20 P	–	2:25 P	X	7			Turned
28	Bos	3240			Mantod	Brady	2:30 P	–	–	✓				Tied up
29	L&N	93		✓	Purcell	Lemmon	–	5:20 P	5:20 P	X	7			
30	BO 5	3244			G Burns	Foley	4:00 P	–	–	✓				Tied up
31	On 4	3245	2:15	✓	Hedrick	Walsh	–	5:30 P	8:30 P	X	7			
32	On 2	3221	4:45	✓	Fitzgerald	Gelderslum	–	9 P	9 P	X	7			
33	L&H	07			Dunn	Babb –	5:10 P		–	X				Tied up
34	Bo 7	3341			Noonan	Kessler	6:40 P		–	9-17				" "
35	R.I.E	324		✓	Babb		6:05 P	–	6:10 P	X	7			
36	E x	3215			Mann	Bergen	7:40 P	–	–	17-17				Tied up
37	Local	950			Jensen	Lombardi	8 P	–	–	9-17				
38	Dne	301		✓	Buddemeier	–	8:25 P	–	8:25 P	X	7			Turned
39	Erie	3393		✓	Cuddeback	–	8:40 P	–	8:40 P	X	7			"
40														
41														
42														T - 24
43														P - 1
44														W -
45														
46														
47														
48														
49														
50														
51														
52														
53														
54														

73

465-4

Form 1004-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex 15A-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-15 1926

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullout									
11P	7a	3418	Holmes	Stickney	-	-	-	-	-	-			
7a	3P	3418	Archard	Fox	-	-	-	-	-	-	3-4P		Changed to engine 3419
3P	11P	3419	Doolittle	Drew	-	11-15P	3410 1800	-	-	-	9-16	1	
			East Bound	Hump									
12a	2a	3223	Heitkmann	Decker	6 1/2 D	-	-	-	-	2-30			
7a	3P	3223	Bunnell	Houston		-	-	-	-	-		1	
6P	1A	3223	Heitkmann	Decker		-	-	-	-	-			
			West Bound	Pull up									
11P	7a	3410	Foley	Richardson	-	2-15	3434 1-2	-	-	-		1	
7a	3P	3434	Misner	Richardson	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Stickney		11-15P	3410 1038	-	-	-	9-16	1	
			West Bound	Hump									
5 30a	1 30P	3104	Smith	Reisinger	5a	-	-	-	-	12-30		1	
4P	1A	3104	Strahan	Purkey	4P	-	-	-	-	12-30	9-16	1	
			Misc Sw										
7a	3P	3419	Swint	White	7a	-	-	-	-	3-4P		1	Changed to engine 3418
			Ex. Sw.										
8a	3 50P	3410	Ripley Rip Clark	F. Russert	8a	-	-	-	-	-		1	
3 50P	4P	3410	Ripley	F Russert	-	-	-	-	-	4P			6-2 W-4 M-2 8

MID-NIGHT ENGINE SITUATION

A 346-3205-3210-3236-

B 554-3202-3206-3214-3216-3229

C 3209-3221-3226-3241-3245-3335-3237

D 3104-3208-3213-3410-3418-3419-3434

Stored none

(8)

465-5

Form 1010-B

7

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 19-A

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD / MAYBROOK ENGINE TERMINAL DATE 9/15 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 3	3235	1140P ✓	Pearson	Chandler	-	2 E	2 E	X	✓			
2	LvH	90		Turner	Dunscombe	12 55 E	-	-	X				Tied up -
3	No 5	3241		Fitzgerald	Silverthorn	935 E	-	-	✓				" "
4	401	3224 ✓		Martin	Stanio	410 E	-	-	✓				" "
5	Pool 11	3200	430a ✓	Gray	Clements	-	640 E	640A	X	✓			
6	Lv N	58	✓	Horn	Lobb	-	6 E	6 E	X	✓			
7	N	304	✓	Lobb		6 E	-	605A	X	✓			Turned
8	No 3	3323		Bartlett	Seeley	6 E	-	-					Tied up
9	0B2	3344	✓	Wooden	Webster	-	830a	830a	X	✓			
10	0B6	3244	✓	Barlow	Dow	-	9a	9a	X	✓			
11	951	1546		Pearson	Smith	9a	-	-	✓				Tied up
12	Erie	3163	✓	Krouse		7 55 a	-	7 45 a	X	✓			Turned
13	Lv W	45 ✓	✓	Magner		8 55 a	-	8 55 a	X	✓			Turned
14	LvH	3215		Delaney	Walsh	8 55 a	-	-	✓	✓	9-16		Tied up
15	Lv W	90	✓	Turner	Dunscombe	-	10 30 a	10 30 a	X	✓			
16	0B4	3243	✓	Wimm	Bergen	-	10 30 a	10 30 a	X	✓			
17	06 W	3240	✓	Martin	Brady	-	12 30 P	12 30 P	X	✓			
18	Lv W	460	✓	M Ewan	-	8 50 a	-	9a	X	✓			
19	Lv N	91	✓	O Brien	-	10 15 a	-	10 15 a	X	✓			Turned
20	Pool 5	3236		Goldsmith	Murdock	10 20 a	-	-	✓	9-16			Tied up
21	Erie	881		Fischer	Long	10 35 a	-	-	✓				" "
22	Lv W	403	✓	Dexter		11a	-	11 05 a	X	✓			Turned
23	Lv W	306	✓	Bridleman	-	11 35 a	-	11 30 a	X	✓			"
24	0B6	3325	✓	Corbett	Quilty	-	2P	2P	X	✓			
25	Pool 7	3211		Knox	Thompson	2a	-	-	✓				Tied up
26	950	1546	✓	Pearson	Smith	-	331 P	3 35 P	X	✓			
27	Lv W	3224	✓	Martin	Stanio	-	4 35 P	4 30 P	X	✓			
28	Erie	3194 ✓	✓	Stitt	-	3P	-	3 45 P	X	✓			Turned
29	Lv W	403	X	Dexter	-	3 40 P	-	3 45 P	X	✓			"
30	Pool 1	3237		Nelmes	Snetberg	3 20 P	-	-	✓				Tied up
31	Pool	3209		Reuter	Decon	3 35 P	-	-	✓				"
32	807	3345		Denlon	Leary	3 35 P	-	-	✓	9-16			" "
33	Pool 7	3220	6P ✓	Knox	Thompson	-	8P	8P	X	✓			
34	805	3226		Brock	Mynott	5 45 P	-	-	✓				Tied up
35	EX	3241		Fisher	Coons	7P	-	-	✓				" "
36	Erie	305	✓	Bridleman	-	7 50 P	-	7 55 P	X	✓			Turned
37	Pool 5	3211	✓	Goldsmith	Murdock	-	10 45 P	10 45 P	X	✓			
38	Erie	3173	✓	Cuddleback	-	8 20 P	-	8 35 P	X	✓			Turned
39	Lv E	56		Bedford	Baker	10 30 P	-	-	X				Tied up
40													
41	On J	867	✓	Closter	Long	6	7 05	705	✓	✓			
42													
43													D - 7
44													P - 1
45													W - 6
46													
47													
48													
49													
50													
51													
52													
53													
54													

24

465-6

Form 1910-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex 154-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-14 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pullout										
11P	7a	3418	Helmic	Person	-	-	-	-	-	-			
7a	3P	3418	Sechrist	Houston	-	-	-	-	-	Out Note			Changed to Yard Job #19
3P	11P	3419	Doolittle	Davis	-	11P	3410 10:30	-	-	-		1	
			East Bound Westerly										
12a	9a	3223	Heckman	Dreller	-	-	-	-	-	2:20			
7a	3P	3223	Bunnell	Stewart	6:10	-	-	-	-	-		1	
6P	1A	3223	Heckman	Dreller	-	-	-	-	-	-			
			West Bound Pullup										
11P	7a	3419	Foley	Brown	-	1:40	3434 2:10	-	-	-		1	
7a	3P	3434	Mixon	Jeffries	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Stafford	-	-	-	-	-	-		1	
			West Bound Hump										
5:30a	1:30P	3104	Smith	Brannigan	5	-	-	-	-	-		1	
4P	1A	3104	Sheehan	Brinkley	-	-	-	-	-	12:00a			
			Misc duty										
7a	3P	3419	Kelly	White	7	-	-	-	-	3:15 3:30		1	Changed to yard job #3418
			Ex Switchers										
12a	8a	3410	Herald	Stickney	12	-	-	-	-	-			
8a	4P	3410	Ripley	Fleuret	-	-	-	-	-	-			
			Rip track										
5P	5:45	3410	Ripley	Fleuret		-	-	-	-	5:15			E-2 W-3 M-2 7

MID-NIGHT ENGINE SITUATION

A 566-3200-3220-3235

B 554-3202-3206-3214-3216-3229

C 3205-3210-3240-3243-3244-3344

D 3104-3208-3223-3410-3418-3419-3434

Stored None

(7)

466-7

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex. 15-A

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/14 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 5	3211	1150P	Sealor	Lustborg	—	2a	2a		7			
2	Local	92		Decker	Wilson	1240a	—	—					Tied up-
3	Local	56		Bedford	Pepe	—	3a	3a		7			
4	Local	356	230a	Sisson	Lombard	—	6a	6a		7			
5	Local	306		Lott		335a		340a		7			Turn
6	Pool 1	3236	350a	Chalmers	Goldsmith	—	5a	5a		7			
7	"	3225		Brown	Pew	625a	—	—	✓				Tied up-
8	OB2	3348		Simpson	Abell	—	830a	8 30a		7			
9	OB6a	3207		Burr	Foley	—	9a	9a		7			
10	No 5	3215		Alger	Sidney	6 05a	—	—	✓				Tied up
11	951	1546		Pearson	Smith	7a	—	—	✓				"
12	Local	3174		Brown	—	7 30a	—	7 30a	X	7			Turned
13	Local	305		Carpenter	—	7 30a	—	7 30a	X	7			Tied "
14	Rel	3247		Shirm	Norbury L	7 30a	—	—	✓				Tied up
15	OW	451		Weaver	—	8 30a	—	8 30a	X	7			Turned
16	No 3	3314		Abraham	Sussler	8 45a	—	—	✓				Tied up
17	OW	456		Tunnell	—	9a	—	9 10a	X	7			Turned
18	Loc	94		Decker	Wilson	—	10 20a	10 20a	X	7			
19	OB4	3241		Fisher	Corns	—	10 50a	10 50a	X	7			
20	OB4	3209		Butts	Bacon	—	12 30p	12 30p	X	7			
21	Rel	71		Purcell	Simmer	9 10a	—	—	X				Tied up
22	Local	303		Irons		10 30a	—	11a	X	7			Turned
23	OW	403		Decker		12 30p	—	12 30p	X	7			"
24	Pool 3	3235		Donovan	Chandler	12 40p	—	—	✓				Tied up
25	Pool 4	3237	1230p	Englehart	Leary	—	2 30p	2 30p	X	7			
26	950	1546		Pearson	Smith	—	3 30p	3 30p	X	7			
27	OW	3225		Brown	Pew	—	4 0p	4 30p	X	7			
28	OW4	3314		Abraham	Sussler	—	5p	5 30p	X	7	30		Fireman reporting late
29	Loc	94		J. Burd	—	2 30p	—	2 45p	X	7			
30	Rel	71		Purcell	Simmer	—	5 30p	5 30p	X	7			
31	OW	403		Decker	—	4 50p	—	4 50p	/				Turned
32	OB7	3344		Woodyard	Fish	4 05p	—	—	/				Tied up
33	Pool	3240		Marlow	Cropley	8 45p	—	—	/				"
34	OW4	3247	630p	Gilmore	Jasberg	—	9 30p	9 30p	X	7			
35	OW2	3215	"	Alger	Sidney	—	9p	9p	X	7			
36	OW6	3248	815p	Bickley	Purcell	—	10p	10p	X	7			Light with Caboose
37	Loc	301		Bowers	—	5 05p	—	8 45p	X	7			Turned
38	Loc	58		Horn	Lobb	8 10p	—	—	✓	7/24			Tied up
39	Pool 1	3239		Gray	Clements	10 45p	—	—	✓				" "
40	Local	3392		Cuddeback	—	8 45p	—	8 53p	X	7			Turned
41	Loc	305		Bullivant	—	9 30p	—	9 30p	X	7			"
42	OB5	3244		Barker	Drew	9 20p	—	—	✓				Tied up
43	Ex	3243		Hamm	Bergen	10 30p	—	—					" "
44													2 — 2P
45													P — 1
46													W
47													
48													
49													
50													
51													
52													
53													
54													

(27)

465-8

Form 1015-D

10

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY **Plaintiffs Ex. 15-A-**

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-13- 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound (Pullout										
11P	7a	3418	Holmes	Parson	-	-	-	-	-	-			
7a	3P	3418	Sechrist	Como	-	-	-	-	-	4P			Changed in yard from 3419
3P	11P	3419	Doolittle	Davis	-	11-45P	3410 10-50P	-	-	-		1	
			East Bound Hump										
4-7a	7a	3214	Heckman	Decker	-	-	-	-	-	2-15a			
7a	3P	3223	Buswell	Reminger	6-55a	-	-	-	-	-		1	
3P	11P	3223	Heckman	Decker	-	-	-	-	-	-			
			West Bound (Pullup										
11P	7a	3419	Reynolds	Krum	-	2-45a	3434 7-0	-	-	-		1	
7a	3P	3434	Mann	Jeffers	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Ballard	-	11-10P	3419 11P	-	-	-	9-14	1	
			West Bound Hump										
5-30a	1-30P	3104	Smith	Houston	5a	-	-	-	-	1-30P		1	
4P	1a	3104	Cochran	Pinckney	4P	-	-	-	-	1-10a	4-14	1	
			Mine Run										
7a	3P	3419	Kelly	White	7a	-	-	-	-	3418 5P		1	Changed in Yard from 3418
			Ex Limiters										
11P	7a	3410	Duffy	Stewart	11P	-	-	-	-	7-10a		1	
8a	3-45P	3410	Ripley	Russell	8a	-	-	-	-			1	E-2 W-4 M-3 9
3-45P	4P	3410	Replaced Ripley	Russell	-	-	-	-	-	5P			

MID-NIGHT ENGINE SITUATION

(9)

A 356 - 366 - 3211 - 3236 - 3237 -

B 554 - 3202 - 3207 - 3206 - 3208 - 3216 -

C 3100 - 3207 - 3209 - 3220 - 3220 - 3241 - 3248 - 3248

D 3104 - 3214 - 3223 - 3410 - 3418 - 3419 - 3434

Stored None

455-9

Form 1010-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 194

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/13 192 9-

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 11	3249	1130a	Gray	Lengyel	–	130a	1300	X	7			
2	Loal	90		Tenbrook	Lindenmuth	1240a	–	–	X	–			Tied up
3	Local	58		Horn	Lobb	–	215a	215a	X	7			
4	401	3224		Dooley	Penn	505a	–	–	✓				Tied up
5	Pool 2	3243	450a	Knox	Thompson	–	7a	7a	X	7			
✓	405	3221		J Fitzgerald	Gildersleeve	530a	–	–	✓				Tied up
7	032	3317		Worden	Fish	–	830a	830a	X	7			
8	086	3226		Buck	Moony	–	9a	9a	X	7			
9	952	1596		Pearson	Smith	7a	–	–	✓				Tied up
10	Pool 5	3211		Tiator	Lentzberg	7a	–	–	✓ 9	14			
11	No 3	3329		Burbul	Duley	7a	–	–	✓				
12	CPN	456		Owen		735a	–	830a	X	7			Turned
13	Gen	3260		Kenny		815a	–	830a	X	7			
14	LPN	304		Jones		830a	–	830a	X	7			
15	LPN	90		Jensen	Swackenbach	–	1030a	1030a	X	7			
16	OB4	3235		Wrenn	Burgen	–	1030a	1030a	X	7			
17	OB4	3240		Warber	Brady	–	1230p	1230p	X	7			
18	Pool	3245		Detrick	Walsh	843a	–	–	✓				Tied up
19	COJ	884		Fowler	Koubek	920a	–	–	✓				
20	CPN	458		Strahsahl	–	940a	–	940a	X	7			Turned
21	Pool 1	3200		C Holmes	Goldsmith	1030a	–	–	✓				Tied up
22	OB6	3329		Burbul	Duley	–	31	31	X	7			
23	LPN	91		Lenzel	–	125p	–	140p	X	7			
24	950	1596		Pearson	Smith	–	330p	330p	X	7			
25	Ola	3224		Dooley	Penn	–	430p	430p	X	7			Tied up
26	OB07	3348		Simpson	Abell	350p	–	–	✓ 9	14			Tied up
27	Con J	882		Fischer	Kaufer	–	530p	530p	X	7			
28	Old	318		Decker		50	–	605p	X	7			Turned
29	ON 4	3245	520	Detrick	Walsh	–	730p	830p	X	7			
✓	ON 2	3221		Fitzgerald	Gildersleeve	–	9p	9p	X	7			
31	Col	3209		Gillis	Bacon	515p	–	–	✓				Tied up
32	Local	356		Sigsor	Lombach	645p	–	–	9	14			" "
33	1305	3203		G Burr	Tilley	605p	–	–	✓				" "
34	KNE	56		Medford	Piper	630p	–	–	✓				" "
35	Ex	3244		Fischer	anderson	745p	–	–	✓ 9	14			" "
36	KNE	301		Bryson	–	805p	–	810p	X	7			Turned
37	Pool 4	3210		English	Leary	805p	–	–	✓ 9	14	9	16	Tied up
38	Ene	3393		Cuddeback	–	920p	–	820p	X	7			Turned
39	Pool 6	3248		Hickey	Purcell	1130p	–	–	9	14			Tied up
40													
41													
42													7 - 21
43										1			P - 1
44													
45													
46													22
47													
48													
49													
50													
51													
52													

465-10

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiff Ex. 134-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-12 1949

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Bullard									
11P	7a	348	Holmes	Person	-	-	-	-	-	-			
7a	3P	3418	District	Coons	-	-	-	-	-	11½ mile	6:15P	✓	Changed to
3P	11P	3419	Doolittle	Davis	-	11:05P	3418 10:30	-	-	-		1	Jane for 3419
			East Bound	Hump									
12a	7a	3208	Hutchinson	Lesesko	-	-	-	-	-	2 1/5			
7a	3P	3208 ✓	Bunnell	Revenier	6 1/2a	1 1/2P	3 1/2 1 1/2P	-	-		1:10P	✓	
6P	12m	3223	Hutchinson	Lesesko	-	-	-	-	-	-	9-17		
			West Bound	Pulldup									
11P	7a	3434	Swinks	Kamm									
7a	3P	3434	Marino	Jeffers									
3P	11P	3434	Mulligan	Shipyard		11:10P	3413 11P				9-13	1	
			West Bound	Hump									
5:30a	1:30P	3104 ✓	Smith	Houston	5a	-	-	-	-	1 1/2 10 ✓	9-13	1	
HP	12	3214 ✓	Abraham	Cumiskey	HP		-	-	-	1 1/2 2	9-13	1	
											9-18		
			Main Sw-										
7a	3P	3419 ✓	Kelley	White	7a	-	-	-	-	3 1/2 P		1	Changed to Jane 3418
			Eng Switchers										
2a	8a	3214 ✓	Stage	Stewart	1 1/2	-	-	-	-	8 1/2	3 1/2P	1	
8a	2 1/2P	3410 ✓	Ripley	J Ruscert	8a	-	-	-	-			1	
			Rip Track										
2 1/2P	HP	3410	Ripley	J Ruscert	-	-	-	-	-	4P			E - 3 W - 3 M - 3 9

MID-NIGHT ENGINE SITUATION

A 366 - 3237 - 3243 - 3249 -

B 554 - 3202 - 3205 - 3206 - 3208 - 3216 - 3220 (9)

C 3226 - 3235 - 3236 - 3240 - 3317 -

D 3214 - 3223 - 3410 - 3418 - 3419 - 3434 - 3104

Stored None

465-11

Form 1872-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 15-A

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/17 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Mls.	REMARKS
1	Pool 4	3210	1145P	✓	English	Dowlow		1 30 a	1 45 a	X	7		15	Connecting ports.
2	Eng	304		✓	Bayard		12 05 a		12 10 a	X	7			Turn
3	Eng	56		✓	Bedford	Piper		1 55 a	1 55 a	X	7			
4	Sow	71			Dawson	Wieland	12 15 a	-	-	X				Tied up.
5	Wreck	3243			Estelle	O'Dell	2 00 a	-	-	✓	9-14 & 9-13			" "
6	Local	356	2 30 a	✓	Simson	Lawrence	-	4 30 a	4 30 a	X	7			
7	Pool 6	3248		✓	Nicely	Tunnell	-	5 a	5 a	X	7			
8	Wreck	3200	4 30 a	✓	Dotson	Mulet	-	7 a	7 a	X	7			
9	Eng	3225			Martin	Starks	4 a	-	-	✓				Tied up.
10	073	3344		✓	Simpson	Abell	-	8 30 a	8 30 a	X	7			
11	036	3207		✓	Berbu	Dow	-	9 a	9 a	X	7			
12	Yes	3215			Alger	Gedney	4 45 a	-	-	✓				Tied up.
13	Pool 3	3206			Dawson	Hamlin	6 a	-	-					" "
14	Local	392		✓	Carpenter	-	6 59 a	-	7 05 a	X	7			Turned
15	Ord	456		✓	Hoffman	-	7 10 a	-	7 20 a	X	7			"
16	951	1596			Pearson	Quirk	9 a	-	-	✓				Tied up
17	Erie	3174		✓	Krouse		8 05 a		8 20 a	X	7			Turned to Yes
18	Boy	3737			Boyer	Duncan	8 10 a	-	-	✓	9-14			Tied up
19	Parker	3349		✓	Umbright	Johnson	8 40 a	-	8 55 a	✓	7			Turned
20	043	3241		✓	Fisher	Dickson	-	10 30 a	10 30 a	X	7			
21	002	3204		✓	Pratt	Bacon	-	12 30 p	12 30 p	X	7			
22	Ford	91		✓	Decker	Wilson	-	10 20 a	10 20 a	X	7			
23	Sow	83			Connell	Trimmer	8 55 a	-	-					Tied up
24	Dow	451		✓	Wagner	-	10 a	-	10 07 a	X	7			Turned
25	Erie	409		✓	Geisler	-	11 a	-	11 40 a	X	7			
26	No 3	3314			R Bennett	Brisler	11 a	-	-	✓	9-14			Tied up
27	Parker	3339			Colbourn	Leary	11 a	-	-	✓				" "
28	Pool 3	3339	11 55 a	✓	Donovan	Hanks	-	2 p	2 p	X	7			
29	750	1596		✓	Pearson	Quirk	-	3 10 p	3 30 p	X	7			
30	Ord	3225		✓	Martin	Starks	-	4 30 p	4 30 p	X	7			
31	Yes	83		✓	Barcelo	Trimmer	-	5 20 p	6 20 p	X	7			
32	Ord	3314		✓	Sheehan	Geisler	-	7 p	7 p	X	7		5	Engine setting Diff.
33	Pool 11	3249			Gray	Lonigan	11 50 p	-	-	✓				Tied up
34	Ord	409		X	Decker	—	5 30 p	-	3 20 p	X	7			Turned
35	8307	3317			Wood	Richardson	4 30 p	-	-	✓	9-13			Tied up
36	Ord	3247		✓	Glynn	Dorlon	-	8 -	8 35 p	X	7		5	Engr Inspecting Eng
37	Ord	3210		✓	Alger	Gedney		9 15	9 p	X	7			
38	Erie	3357		✓	Lindabach	—	8 40 p	-	8 40 p	X	7			Turned
39	Eng	201		✓	Lobb	—	9 20 p	-	9 20 p	X	7			Turned
40	Erie	34			Nunn	Lobb	5 45 p	-	-	X				Tied up
41	E01	30140			Moulton	Bracky	10 p	-	-	✓	9-13			" "
42	305	3226			Duell	Dilcox	10 10 p	-	-	9-13				" "
43	Yes	3238			Amin	Bergen	10 40 p	-	-	9-13				" "
44	Pool 4	3236			Kunz	Thompson	10 55 p	-	-	9-13	9-14			" "
45														
46														7 - 6
47														P - 1
48														00 - 0
49														
50														
51														
52														
53														

465-12

Form 1975-D

14

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 15-A

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-11- 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pull out									
11P	7a	3418	Holmes	Perkins	-	-	-	-	-	-			
7a	3P	3418	Jacklyn	Coon	-	-	-	-	-	3:45P	3:45P	1	Changed in yard for 3419
3P	11P	3419	Doolittle	Dana	-	11:10	3410 / 10:30	-	-	-	9-12	1	
		3419 / 3208	East Bound	Hump									
12a	9a		Heckman	Dieckes	-	-	-	-	-	2:25			
7a	3P	3408	Bunnell	Houston	6:40	-	-	-	-			1	
6P	12	3208	Heckman	Dickie	-	-	-	-	-				
			West Bound	Pull up									
11P	7a	3214	Duffy	Kanna	-	10:45	3412 / 7a	-	-	-		1	
7a	3P	3410	Meow	Jeffers	-	-	-	-	-	-			
3P	11P	3410	Mullegan	Shepard	-	11:10	3434 / 10:40P	-	-	-	11:12	1	
			West Bound	Hump									
5:30a	1:30P	3104	Smith	Stewart	5:2	-	-	-	-	1:34P		1	
4P	12	3104	Schuhan	Pennsylvania	HP	-	-	-	-	12:20a	9-12	1	
			Main Dr.										
7a	3P	3419	Kelley	White	70	-	-	-	-	3418 / 3P		1	Changed in yard for 3416
			Ex. Dr.										
8a	4P	3214	Ripley	Wright	80	-	-	-	-	4P		1	

E - 2
M - 4
W - 2
8

MID-NIGHT ENGINE SITUATION

A

B 366 - 554 - 3202 - 3205 - 3216 - 3230 - 3247 -

C 356 - 3200 - 3207 - 3209 - 3218 - 3231 - 3248 - 3344

D 3104 - 3208 - 3214 - 3223 - 3419 - 3418 - 3419 - 3434

Stored ——

(8)

Form 1212-C

15

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 15-A

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any service except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/17 19 49

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 11	3249	1120 A	Gray	Grant	—	1130a	1130a	X	7			
2	Loc 11	90		Jensen	Lieutenant	1225p	—	—	X				Tied up
3	Loc 2	58	1230p	Horn	Loft	—	250p	250p	X	7			
4	Loc 1	3240		Marlow	Brady	150a	—	—	✓				Tied up
5	Loc 5	3244		Burns	Jones	344a	—	—	✓				" " Relieved at RC by Loc 5
6	Exp	3205		Muir	Bilger	4a	—	—	9-17				" "
7	Pool 5	3211		Sealer	Lentz	440a	—	—	✓				" "
8	Pool 1	3236		Haines	Goldsmith	520a	—	—	✓				" "
9	Loc	3224		Brown	Frederick	515a	—	—	✓				" "
10	Pool	3222		English	Gordon	550a	—	—	✓				" "
11	Loc	3219	✓	Jones	—	430a	—	430a	✓	7			Turn
12	Pool 2	3248	✓	Worden	Richardson	—	850a	850a	X	7			
13	Pool 2	3211	6406 ✓	Tyler	Thompson	—	9a	930a	X	7			
14	Loc	3191	✓	Krona		658a	—	700a	X	7			
15	951	1596		Pearson	Smith	7a	—	—	✓				Tied up
16	QW	459	✓	Otwell		720a	—	730a	X	7			Turned
17	FW	90	✓	Jensen	Breckenbrick	—	1230a	1030a	X	7			
18	QW	460	✓	Fife	—	810a	—	810a	X	7			Turned
19	No 3	3315		Birbeck	Bailey	8a	—	—	✓				Tied up
20	NW	3221	✓	Fitzgerald	Goldsmith	820a	—	—	✓				"
21	FW	30	✓	Lafley	—	910a	—	930a	X	7			Turned
22	Q34	3206	9 32 ✓	Hynes	Burgon	—	1230p	12p	X	7			
23	Q36	3244	✓	Burns	Frank	—	1211p	1230p	X	7			
24	Loc	3240	✓	Marlow	Brady	—	1230p	1230p	X	7			
25	CNJ	899		Fischer	Kenton	9a	—	—	X				Tied up
26	NHE	301	✓	Bryson	—	1030a	—	1030a	X	7			Turned
27	Pool 5	3236	11 42 ✓	Tenter	Lansberg	—	2p	2p	X	7			
28	QW	406	✓	Osborn		230p	—	230p	X	7			Turned
29	950	1596	✓	Pearson	Smith	—	330p	330p	X	7			
30	Q16	3315	✓	Birbeck	Bailey	—	4p	4p	X	7			
31	Loc	3244	✓	Brown	Frederick	—	430p	430p	X	7			
32	CNJ	899	✓	Kuyper	Kenton	—	520p	520p	X	7			
33	Yd	56		Bedford	Pfeffer	520p	—	—					Tied up
34	B07	3341		Simpson	Jack	535p	—	—	✓	9-17			"
35	Pool 6	3248		Hickey	Connell	6p	—	—					
36	Local	356		Jensen	Jambeck	615p	—	—	9-17				
37	Qu1	3245	630p ✓	Holmes	Goldsmith	—	830p	830p	X	7			
38	Q102	3221	✓	Fitzgerald	Goldsmith	—	9p	9p	X	7			
39	E01	3209		Bedford	Bacon	730p	—	—	✓	9-17			Tied up
40	Q4	3241		Fahey	anderson	805p	—	—	✓	9-17			"
41	Loc 2	3350	✓	Applegate		830p	—	830p	X	7			Turned
42	Loc 1	306	✓	Lafley	—	910p	—	910p	X	7			"
43	No 5	3207		Charles	Lloyd	925p	—	—	9-17				Tied up
44	TN	3200	✓	Sherman	Fuss	1025p	—	—	9-17				"
45	"	3210		Detrick	Mabb	1050p	—	—	9-17				"
46													
47													Q-13
48													Q-1
49													W
50													
51													
52													
53													
54													

465-14

16

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 154

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-10 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullout									
11P	7A	3419	Holmes	Carson	-	-	-	-	-	-			
7A	3P	3418	Sleger	Covino	-	7	-	-	-	-		1	→ Laying-by in yard for 3419
3P	11P	3419	Doolittle	Dann	-	11 45P	3436 10 30P	-	-	-			
			East Bound	Hump									
12A	9A	3208	McKenna	Zwicker	-	-	-	-	-	2 30A			
7A	3P	3208	Burnett	Richardson	6 45A	-	-	-	-	-		1	
6P	1A	3228	Hickman	Decker	-	11 30P	3411 1 45A	-	-	-	9-11	1	
			West Bound	Pull up									
11P	7A	3D14	Lennox	Davis	-	1 45A	3410	-	-	-		1	
7A	3P	3410	Mesner	Jeffers	-	-	-	-	-	-			
3P	11P	3410	Milligan	Shepard	-	11 19P	3410 10 30P	-	-	-	9-11	1	
			West Bound	Hump									
5 30S	1 30P	3104	Smith	Houston	5A	-	-	-	-	1 30P		1	
4P	1A	3104	Bluhm	Pinsenay	4P	-	-	-			9-11	1	
			Mass Sw										
7A	3P	3419	Kelley	White	7A	-	-	-	-	3 45P		1	Changed in Yard for 3418

MID-NIGHT ENGINE SITUATION

A 3249

B 366-554-3202-32.1-3220-[illegible]-3242-3247-3434

C 3348

D 3104-3138-3214-3223-3410-3416-3419

Repeat None

E - 3
N - 4
M - 1
T

8

465-15

Plaintiffs Ex 154

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/10 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	LvN	71		Decker	Wilson	12 45a	-	-	X				Tied up:
2	Newton	3243	12 30p ✓	Heald	Stickney		1 Once	1 Wi	X	7			
3	Local	42	✓a	Bedford	Topper	-	3	3	X	7			
4	No 3	3314		Sheldon	Snyder	3 10	-	-	✓				Tied up
5	Local	356	✓	Sisson	Lambert	—	4 30a	4 30	X	7			
6	No 5	3215		Alger	Sidney	4 10a	-	-	✓				Tied up
7	Ao1	3225		Dooley	Treseler	4 45	-	-	✓				" "
8	OB2	3342	✓	Simpson	Abell	-	8 30a	8 30a	X	7			
9	OB6	3226	✓	Bucy	Mooney	-	9	9a	X	7			
10	951	1596		Pearson	Burnett	7a	-	-	✓				Tied up
11	Erie	3178	✓	Krouse	-	7 15a	-	7 33	X	7			Turned
12	LvPt	307	✓	Burgard		7 31a	-	7 45	X	7			
13	LvN	71	✓	Decker	Wilson	-	10 20a	10 30a	X	7			
14	OB4	3241	✓	Fischer	Anderson	-	10 30a	10 30a	X	7			
15	Hopper	3219	✓	Reynolds	Rosenyer	-	10 30a	10 30a	X	7			Light for game
16	Ont	460	✓	Wayne		9 25	-	9 30a	X	7			Turned
17	LvH	83		Purcell	Trimmer	9 30a	-	-	X				Tied up
18	OB2	3209	✓	Belt	Bacon	-	12 30p	12 30p	X	7			
19	OrW	451	✓	Quinn	-	11 0a		11 05a	X	7			Turned
20	Bay	3219		Glynn	Vosburgh	10 30a	-	-	✓				Tied up
21	Own	409	✓	Decker	-	11 30a	-	11 45a	X	7			Turned
22	Ou6	3314	✓	Sheehan	Beardsley	-	2 15	2 P	X	7			
23	950	1596	✓	Pearson	Smith	-	3 30	3 30	X	7			
24	Ou2	3225	✓	Dooley	Price	-	4 30	4 30	X	7			
25	LvH	83	✓	Purcell	Trimmer	-	5 30	5 30	X	7			
26	Erie	3160	✓	Steele	—	HP	-	10 ?	X	7			Turned
27	Pa13	3235	4 45p ✓	Donovan	Chandler	-	6 30	—	X				Cancelled at 5 25
28	Pa11	3249	5P	Gray	Grant	-	7 30	—	X				" " " 5 25
29	Own	409		Decker	-	5P	-	5 30	X	7			Turned
30	Ou4	3237	3P ✓	Glynn	Vosburg	-	6 30	8 30	X	7			
31	Ou2	3215	" ✓	Alger	Gidney	-	9P	9P	X	7			
32	LvC	59		Horn	Lobb	6 20	-	-	X				Tied up
33	LvE	301	✓	Lobb	-	6 30	-	6 30	X	7			Turned
34	Pa12	3235	7 45p ✓	Donovan	Chandler	-	10P	10P	X	7			
35	Erie	3354	✓	Cuddeback	-	9 15	-	9 20	X	7			Turned
36	Lvn	306	✓	Buckmaster	-	9 20	-	9 25a	X	7			
37	Bo7	3348		Wooden	Fish	9 30	-	-	✓				Tied up
38	LvE	303	✓	Mutton	-	10 05	-	10 10	X	7			Turned
39													
40													
41													
42													
43													
44													
45													
46													D-26
47													D-1
48													W-1 (21)
49													
50													
51													
52													
53													
54													

465-16

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiff's Ex. 15-A

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-9- 19[illegible]

WORKING HOURS From	To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull out										
11P	7A	3418	Of Holmes	Parsons	-	-	-	-	-	-			
7a	3P	3418	Nothing	Crowe	-	-	-	-	-	2nd trip 4:45p			Changed to
3P	11P	3419	Goodale	Lewis	-	11:10p	3418 12:45p	-	-	-	9/10		1. found #3419
			East Bound Humps										
12a	9a	3208	Stage	Drake	5	-	-	-	-	10a			
7a	3P	3208	Bunnell	Ruediger	6:45a	-	-	-	-	-		1	
3P	12	3208	Head man	Yeager	-	-	-	-	-	-			
			West Bound Pull up										
11P	7A	3410	Reynolds	Anderson	-	-	-	-	-	-			
7a	3P	3410	Wrainer	Jeffers	-	-	-	-	-	-			
3P	11P	3410	Mullyan	Shepard	-	11:10P	3247 10:30P	-	-	-	9/10	1	
			West Bound Humps										
4P	12	3104	Thuban	Pawlowsky	-	-	-	-	-	12:00a	9:10		
			Mine Switcher										
7a	3P	3419	Kelly	White	7a	-	-	-	-	3:16 3P		1	Changed to found #3418
			Shop Switcher										
4a	3:40a	3214	Rigley	F Rickert	8a	-	-	-	-	-		1	
			Rip track										
3:40P	4P	3214	Ripton	F Rickert	-	-	-	-	-	4P			

E-2
W-1
M-2

MID-NIGHT ENGINE SITUATION

A 3209-3226

D 316-354-3202-3216-3220-3230-3240-3247-3434

C 254-3237-3241-3248-3249-3345

D 3104-3208-3214-3223-3410-3418-3419

Stored None

465-17

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY 19 Plaintiffs Ex. 150

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 4 192 9

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Extra	306		Loff	-	12 45 a		2 50 a	X	✓			Lunch
2	Ext	3206	11 55 a	Donlon	Donovan	-	2 50 a	2 50 a	X	✓			
3	Extra	307		Mullen		1 25 p		1 50 a	X	✓			Lunch
4	Extra	90		Jensen	Superintendent	12 35 a	-	-	X				Dual up
5	Pool 11	3220		Gray	Hurst	5 a	-	-	9-13	89 15			" "
6	Ash	3224		Martin	Miller	4 15 a	-	-	✓				" "
7	Ash	3244		Noonan	Hurd		8 50 a	8 50 a	X	✓			
8	Ash	3207		Barber	Lane	-	9 a	9 a	X	✓			
9	NO3	3223		Burbul	Finnegan	5 35 a	-	-	✓				Dual up
10	Extra	58		Carpenter	Doyle		5 a	5 a	X	✓			
11	951	1596		Pearson	Kenoth	7 a	-	-	✓				Dual up
12	NY	3200		R Bennett	Linder	7 a	-	-	✓				" "
13	Erie	3158		Kinnes	-	7 26 a		7 55 a	X	✓			Lunch
14	Extra	90		Jensen	Breckenbach	-	10 50 a	10 50 a	X	✓			
15	Ash	3205		Wiens	Bergen	-	10 50 a	10 50 a	X	✓			
16	Ash	3240		Marler	Warner	-	12 50 p	12 50 p	X	✓			
17	Ash	3256		McEwen		8 50 a		8 50 a	X	✓			Lunch
18	Ash	4574		Wagner	-	8 50 a		8 50 a	X	✓			"
19	Ash	874		Fischer	Kontor	8 50 a	-	-	✓				Dual up
	Ash	408		Decker	-	11 50 a		12 20 p	X	✓			Lunch Turn Lay
	Ash 6	3223		Burbul	Finnegan	-	2 p	4 p	X	✓			Lunch only also
22	White	3240		R Bennett	Linder	-	3 p	3 p	X	✓			
23	Extra	91		Nabeson	-	1 10 p	-	1 20 p	X	✓			Lunch
24	950	1596		Pearson	Kenoth	-	3 50 p	3 50 p	X	✓			
25	Erie	3191		Strud	-	2 45 p		2 50 p	X	✓			Lunch
26	Ash	3224		Martin	Miller	-	4 30 p	4 30 p	X	✓			
27	Ash	3209		Bell	Bacon	10 50 a	-	-	✓				Dual up
28	Ash	408		Decker	-	2 40 p	-	3 40 p	X	✓			Lunch
29	Ash	874		Keyser	Kontor	-	5 20 p	5 20 p	X	✓			
30	Ash 6	3248	4 20 p	Buckley	Purcell	-	7 p	7 p	X	✓			
31	Ash 7	3243		Simpson	Abell	4 20 p	-	-	✓				Dual up
32	Ash 5	3226		Buck	Moore	5 20 p	-	-	✓	9-7			" "
33	Ash E	402		Bedford	Piper	6 p	-	-	X				" "
34	Pool 2	3249		Kraft	Thompson	6 p	-	-	✓	9-11			" "
35	Ex	3243		Duffey	Stuart	6 20 p	-	-	9-18				" "
36	Ash 4	3210	6 20 p	Dalnick	Walsh	-	8 30 p	8 30 p	X	✓			
37	Ash 2	3221	"	Fitzgerald	Goldenstein	-	9 p	9 p	X	✓			
38	Local	305		Olsen	Lombardi	6 25 p	-		9-10				Dual up
39	Erie	3358		Cuddeback	-	8 p	-	8 20 p	X	✓			Lunch
40	Extra	301		Meichsner	-	8 p	-	9 p	X	✓			Lunch
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

✓ - X
D - ✓
W - 6

465-18

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex. 134

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-8- 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullout									
11P	7a	3418	C Holmes	Brown	-	-	-	-	-	-			Terminated Stayed in lieu Jones job 3419
7a	3P	3418	Bechtel	Cross	-								
3P	11P	3419	Doolittle	Dames	-	11 45	3418 / 5036	-	-	-	9/9	1	
			East Bound	Dump									
12a	2a	3208	Reynolds	Decker	-	-	-	-	-	2 1/2			
7a	3P	3208	Dimmick	Stiesing	6 45a	-	-	-	-			1	
6P	12m	3208	Stagl	Decker		-	-	-	-				
			West Bound	Pullup									
11P	7a	3214	Foley	Krum	-	2 1/2a	3734 / 1430	-	-	-	9/9	1	
7a	3P	3434	Munger	Jeffers	-	-	-	-	-				
3P	11P	3434	Mulligan	Shepard	-	-	-	11 45	3414 / 10:50P	-	9-11	1	
			West Bound	Dump									
5 30p	1 30a	3104	Smith	Morris	5a	-	-	-	-	1 30a		1	
4P	12m	3104	Mullaud	Pinckney	4P	-	-	-	-	12 30a	9/9	1	
			Main Switcher										
7a	2a	3419	Kelly	White	7a	-	-	-	-	3414		1	Stayed part 3418
			Shop Switcher										
8a	4P	3410	Ripley	F Rivard	-	-	-	-	-	4P			E - 2 W - 4 M - 2 8
			Ex Switcher										
12a	8a	3410	Herald	F Rivard	12m	-	2	-	-	-		1	

(7)

MID-NIGHT ENGINE SITUATION

3205 - 3206 - 3210 - 3211 - 3344 -

3606 - 3704 - 3707 - 3716 - 3737 - 3744 - 3745 - 3747

3207 - 3735 - 3740 - 3748 -

3104 - 3708 - 3214 - 3723 - 3440 - 3446 - 3419 - 3434

Stored None

465-19

2-1

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex. 154

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 8 1927

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Bos	3244		Duffy	Rimmer	12 30 n	–	–					Quit up
2				N Foley	Richardson								Relieved at Madison 11 45 a
3	Pool 11	3200	11 35 a	Geary	Walsh	–	2 30 a	7 30 a	X	7			
4	Pool 1	3236		C Holmes	Costello	12 45 a	–	–					Tied up
5	Pool 4	3206		Donlon	Durkin	12 45 a	–	–					" "
6	Bal	3225		Brown	Waite	2 – a	–	–					" "
7	NHE	56		Orford	Papin		6 a	6 a		7			
8	No 3	3314		Sheehan	Ruppinger	5 30 a	–	–					Quit up
9	OBx	3348		Goldsmith	Abell		8 30 a	8 30 a	X	7			
10	AB 6	3244		S Burr	Foley		9 a	9 a		7			
11	951	1596		Pearson	Smith	7 – a	–	–					Tied up
12	Jon 3	307		Bryson	–	7 30 a	–	7 30 a		7			Turn
13	OTW	460		Fife	–	7 45 a	–	7 50 a		7			"
14	C&H	95		Derber	Wilson	–	10 30 a	10 30 a	X	7			
15	OB 4	3243		Duffy	Stewart	–	10 30 a	10 30 a	X	7			
16	Bo1	3245		Delilah	Geary	7 50 a	–	–	9-11				Tied up
17	No 5	3221		Smith	Whitehouse	7 55 a	–	–					"
18	Erie	3191		Franks	–	8 25 a	–	8 44 a	X	7			Turn
19	OTW	451		Holland	–	8 35 a	–	8 45 a		7			"
20	LOH	83		Fussell	Trimmer	9 40 a	–	–					Tied up
21	Bos	303		Bingard	–	10 35 a	–	10 44 a		7			Turn
22	NH	1103		Derber	–	11 45 a	–	11 29		7			"
23	BE 2	3209		Bates	Bacon	–	12 30 p	12 30 p		7			
24	OTW	3314		Sherbard	Beecher	–	XP	XP		7			
25	Pool 6	3205		Hickey	Fussell	12 45 p	–	–		9/9			Tied up
26	960	1596		Pearson	Smith	–	3 30 p	3 30 p		P			
27	Pool	3249		Knox	Thompson	–	3 45 p	3 45 p		7			
28	Bal	3225		Brown	Waite	–	4 30 p	4 30 p	X	7			
29	OTW	403		Decker	–	2 15 p	–	2 25 p		7			Turn
30	LHH	93		Purcell	Trimmer	–	6P	6P	X	7			
31	Bo 7	3344		Woodin	Spinator	3 35 p	–	–					Tied up
32	EO1	3240		Marlow	Warner	4 15 p	–	–		7/1			"
33	Pool 5	3211	6 10 p	Sealey	Ray	–	7 30 p	7 30 p		7			
34	EX	3248		Brown	Berger	6P	–	–	9-9				Tied up
35	Erie	305		Reidlinger		6 50 p	–	6 55 p	X	7			Turn
36	Bos	3245		Barker	Jean	6P	–	–					Tied up
37	Pool	3236		C Holmes	Costello	–	10P	10P	X	7			
38	Pool 3	3225		Donovan	Sandle	7 40 p	–	–	9-10				Tied up
39	Erie	51		Carpenter	Lobb	7 30 p	–	–	X				"
40	Erie	3365		A Miller	–	11 30 p		11 45 p	X	7			Turned
41													8 - 14
42													D - 1
43													W - 0

97

465-20

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiff's Ex. 154

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-7- 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pullout										
11P	7a	3418	Valerio	Parson	-	-	-	-	-	-			
7a	3P	3418	Richard	Crowe	-	-	-	-	-	-			
3P	11P	3419	Doolittle	Coons	-	11 10P	3 35P	-	-	-		1	to mto
			East Bound Stumps										
12a	2a	3208	Heald	Decker	-	-	-	-	-	2 20a			
7a	3P	3208	Burnell	Durant	6 15a	-	-	-	-	-		1	
6P	7a	3208	Reynolds	Decker	-	-	-	-	-	-			
			West Bound Pickups										
11P	7a	3214	Foley	Thurm		9 10P	3 35 1 35		-	-		1	
7a	3P	3434	Warner	Jeffers	-				-	-			
3P	11P	3434	Mulligan	Hayes	- 0	11 40P	3 35 10 50		-	-		1	
			West Bound Stumps										
3 50a	1 35P	3104	Smith	Fish	5a	-	-	-	-	1 35P		1	
4P	12m	3104	Sherbard	Penahey	4P	-	-	-	-	12 00m		1	
			Main Switcher										
7a	3P	3414	Kelly	White	7a	-	-	-	-	3 00 3P			changed to 3418
			Shop Switcher										
8a	3 30P	3410	Regan	F. Russell	-	-	-	-	-	-			
12 30P	4P	3410	Ryplee	F. Russell	-	-	-	-	-	4P			
			Ex Switcher										
12a	8a	3410	Stagl	Stewart	12m	-	-	-	-	-		1	E - r m - 4 m - n

MID-NIGHT ENGINE SITUATION

(8)

A 3700-

B 366-554-3216-3237-3241-3247

C 3222-3210-3211-3269-3243-3249-3316

D 3104-3209-3223-3214-3410-3418-3419-3434

Stored Mend

465-21

Form 1270-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 154-A

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 7 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Prd 6	3771	11 30 P/6	Hickey	Purcell	-	1 30 a	1 30 a	X	7			
2	Lyre	58		Hughes	Lutt	-	3 26 a	3 40 a	X	7			
3	Lyre	356		Simmons	Lambert	-	4 46 a	4 50 a	X	7			
4	0134	3377		Worden	Hamilton	-	8 30 a	8 45 a	X	7			
5	0136	3776		Burk	Dunn	-	9 a	9 a	X	7			
6	Act	3774		Dooley	Purcell	6 a	-	-	✓				Laid up
7	Lyre	307		Augustin		6 30 a		6 50 a	X	7			Turn: Water
8	951	1596		Pearson	Smith	7 05 a	-	-	✓				Tied up.
9	0144	454				7 45 a		8 05 a	X	7			Turn
10	Act	90		Tennent	Hendrix		10 30 a	10 40 a	X	7			
11	1034	3748		Gilbert	Bergen		10 30 a	10 38 a	X	7			
12	Rev	3240		Taylor	Brady		12 21 p	12 37 p	X	7			
13	105	3344		Alger	Hendry	8 25	-	-	✓				Tied up
14	0144	454		Stevens	—	8 45	-	9 a	X	7			Turn
15	134	3377	X	Worden	Houston	9 15	-	9 30 a	X	7	17		Sent back from [illegible] at 9:15 Delivered at [illegible]
16	201	3747		Glynn	Gawalunke	8 54	-	-	✓				Tied up
17	Cnj	860		Fisher	Hanten	9 22	-	-	✓				" "
18	Bel	3247		Glynn	A								
19	103	3373		Calvin	Grant	9 40 a	-	-	✓				Tied up
20	Prd 4	3720		Knapp	Thompson	10 a	-	-	✓				" "
21	Cnt	306		Ruggles		10 45 a	-	11 a		7			Turn
22	144	403		Decker		11 15 a	-	11 15 a		7			"
23	Prd 3	3735		Donovan	Handler		2 P	4 P		7			
24	950	1596		Pearson	Smith		3 33 p	3 35 p		8			
25	0144	3774		Dooley	Purcell		4 15 p	4 35 p		8			
26	Prd 5	3211		Fenton	Boy	3 P	-	-	✓ 9/9				Turn:
27	107	3348		Goldsmith	Abbell	3 30 p	-	-	✓				" "
28	0116	3323		Calvin	Grant		6 20 p	6 40 p		7			
29	Cnj	860		Kenyon	Kenlen	-	6 P	6 P		7			
30	0144	403	X	Decker	-	5 40 p	-	5 45 p		7			Turned
31	601	3209		Dodds	Anderson	6 20 p	-	-	✓				Tied up
32	0114	3220	6 40 P	Glynn	Gawalunke	-	9 35 p	8 20 p		7			
33	0112	3215	11	Alger	Greening	-	9 P	9 P		7			
34	Lyre	305		Bellafleur	-	6 40		6 40 p		7			Turn
35	Lyre	56		Bedford	Piper	7 30	-	-					Tied up
36	Rel	3187		Wood	-	8 20	-	8 35		7			Turned
37	Rel	3743		Fisher	Buckner	10 15	-	-	✓				Tied up
38	Lyre	301		Lobb	-	11 35 p		11 45 p		7			Turned
39	Lyre	95		Decker	Wilson	11 15 p	-	-					Laid up
40													
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

7 - M
0 - 1
M - 0

465-22

Form 1572-B

24

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 194-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-6- 1948

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL ON DECK	ENGINE TURNED	REMARKS
			East Bound	Pull out									
11P	7a	3418	Halpin	Brown	-	-	-	-	-	-			Light to Selkirk
7a	3P	3418	Burbyte	Crowe	-	-	-	-	-	-	4 1/2 P		
3P	11P	3419	Duffy	Hanston	-	11 1/2 P	3 41 4 10 1/2 P				1.2	1	
			East Bound	Dumps									
12a	7a	3208	Stage	Heller	6 1/2 P	-	-	-	-	2 1/2 P			
7a	3P	3208	Bunnell	Houston		-	-	-	-	-		1	
6P	2a	3208	Nuell	Decker	-	-	-	-	-	-			
			West Bound	Pull up									
11P	7a	3214	Foley	Brown	-	2 AM	3 40 4 11 1/2 A	-	-	-		1	
7a	3P	3434	Munn	Deffera	-	-	-			-			
3P	11P	3434	Millyer	Shepard	-	-	-	11 1/2 P	3 41 4 10 1/2 P	-	34-7	1	
			West Bound	Dumps									
5 1/2 P	1 3/4	3204	Smith	Stuart	5a	-	-	-	-	1 2 1/2 P		1	
4P	12	3204	Shehan	Pinchney	4P	-	-	-	-	1 1/2 P	917	1	
			Mine	Dir									
7a	3P	3419	Kelly	Shilo	7a	-	-	-	-	3 1/2 P		1	changed engine for 3418
			Adj Job										
8a	3 1/2	3410	Ripley	J Rivers	8a	-	-	-	-	-		1	
			Ripleneck										
3 1/2 P	4P	3410	Ripley	J Rivers	-	-	-	-	-	4P			
													16 - 7
													11 - 4
													11 - 7

MID-NIGHT ENGINE SITUATION

A 356-3221-3226-3327

B 326-5543210-3216-3287-3241-3249

C 3215-3202-3240-3248

D 3104-3208-3214-3223-3410-3418-3419-3434

Stored None

(8)

465-25

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 139

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 6 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	[illegible]	56	11 35	✓	Busfield	Pepin	-	1 05 a	1 05 a	X	7			
2	Pal V	3200	-	✓	Kemp	Thompson	-	1 35 a	1 30 a	X	7			
3	Bal 5	3211	1 a	✓	Teator	Ryan	-	4 a	4 a	X	7			
4	CSY	3324		✓	Simpson	Abbe	-	8 50 a	8 50 a	X	7		35	Waiting for Derby Train
5	2136	3530		✓	Barber	Dean	-	9 a	9 a	X	7			
6	951	1596			Finigan	Smith	7 05 a	-	-	✓				Tender
7	BAW	460		✓	Jackson	—	7 20 a	-	7 35 a	X	7			Turn
8	CNE	304		✓	Bunyard	—	7 45 a	-	7 45 a	X	7			"
9	NO 3	3314			Kilduff	Lindsay	7 45 a	-	-	✓				Tender
10	Sun	3141		✓	Frank	—	7 55 a	-	8 05 a	X	7			Turn
11	Aol	3225			Martens	Miller	7 45 a	-	-	✓				Tender
12	NW	457		✓	McCune	—	7 45 a	-	7 55 a	X	7			Turn
13	CAT	77			Tyrrell	Lyons	8 30 a	-	-	X				Tender
14	[illegible]	3245			Detrich	Deany	8 45 a	-	-	✓				" "
15	CC 6	95		✓	Decker	Wilson	-	10 30 a	11 30 a	X	7			
16	1134	3243		✓	Fuller	Mahoney	-	10 30 a	10 30 a	X	7			
17	NEX	3209		✓	Betts	Anderson	-	12 30 p	12 30 p	X	7			
18	NO 5	3221			Reynolds	Hildebrand	9 35 a	-	-	✓	9-7			Tender
19	NW	403		✓	Decker	—	11 05 a	-	11 45 a	X	7			Turn
20	Pal 1	3226	11 30	✓	Holmes	Goldsmith	-	1 30 p	1 30 p	X	7			Eight wheels & Tower
21	Pal 4	3314	11 45	✓	England	Dunlap	-	1 30 p	1 30 p	X	7			" "
22	950	1596		✓	Peterson	Smith	-	3 15 p	3 30 p	X	7			
23	OMC	3206		✓	Sheehan	Brennan	-	3 40 p	3 50 p	X	7		2	Engine & Tower
24	Bal	3225		✓	Martin	Miller	-	4 30 p	4 30 p	X	7			" "
25	CNO	91		✓	Neisel	—	12 40 p	-	12 50 p	X	7			Turn
26	Pal 3	3235		✓	Dingman	Chandler	2 15 p	-	-	VOID				Tender
27	CAT	72		✓	Gerrell	Timmons	5	5 25 p	5 35 p	X	7			
28	107	3302			Woodin	Fish	4 20 p	-	-	✓				Tieup
29	CNO	403		X	Decker	-	4 10 p	-	4 15 p	X	7			Turned
30	Pool 1	3205			Gray	Walsh	5 30 p	-	-	✓				Tieup
31	NH 4	3245	6 10		Fredricks	Keary	-	5 30 p	7 30 p	X	7			
32	CNO	3205		✓	Severick	Gildersleeve	-	9 P	9 P	X	7			
33	[illegible]	58			Hughes	Lobb	6 50 p	-	-	X				Tieup
34	Local	356			Gilgan	Lombard	7 05 p	-	-	9 P				Tieup
35	[illegible]	303		✓	Lobb	—	7 05 p	-	7 45 p	X	7			Turned
36	1305	3226			Quick	Moore	7 30 p	-	-	[illegible]				Tieup
37	E01	3240			Merlin	Bradley	7 25 p	-	-	[illegible]				" "
38	[illegible]	3191		X	Kingsley	-	9 15 p	-	9 30 p	X	7			Turned
39	KY	3202			Albanese	Bergen	10 30 p	-	-	9 7	9-10	1	23	Tieup
40	Cy	3248			Bailey	Fahey	11 - p	-	-	9-1				" "
41	[illegible]	90			Fenton	Kinder	11 25 p	-	-	9 7				" "

7 - 44
P - 1
W - 0

7 3

465-24

Form 1706-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 154-

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-5 19[illegible]

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrival	Dep'd	Arrival	Dep'd	Arrival	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull out										
11P	7a	3418	Nolmes	Parsons	-	-	-	-	-				
7a	3P	3418	Tierney	Cronin	-	-							
3P	11P	3419	Doolittle	Brannigan	-	11¼						1	
			East Bound Hump										
12a	2a	3208	Jennings	Packard	-	-	-	-	-	2			
7a	3P	3[illegible]	Bennett	Armstrong	6¼a	-	-	-	-	-		1	
6P	12m	3205	Stage	Leaden	-	-	-	-	-	-			
			West Bound Pull up										
11P	7a	3410	Foley	Brennan	-	-	-	-	-	-			
7a	3P	3410	Nugent	Dyer	-	-	-	-	-	-			
3P	11P	3410	Gallagher	Shepard	-	11¼					9-6	1	
			West Bound Hump										
5:30a	12n	3104	Smith	Stewart	5a	-	-	-	-	12¾		1	
4P	12m	3104	Sheldon	Pinchoff	-	-	-	-	-	12¾	9-6		
			Mine Hunters										
7a	3P	3419	Kelly	White	7a	-	-	-	-	3¾P		1	
			Ship Hunters										
8a	3:40P	3434	Ripley	F Russell	8a	-	-	-	-	-			
3:40a	4P	3434	Rep Hacks Ripley	F Russell	-	-	-	-	-	4P			

T - 2
W - 2
M - 2

MID-NIGHT ENGINE SITUATION

A 3204 - 3209 - 3211.

B 366 - 554 - 2210 - 3215 - 3216 - 3249 - 3232 - 3241.

C 3236 - 3243 - 3206 - 3224 - 3550

D 3104 - 3208 - 3214 - 3223 - 3410 - 3418 - 3419 - 3434

Remarks None

(6)

465-25

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY — Plainville Ex. 1999

INSTRUCTIONS: This report to show the times of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are designed to outlashing service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 5 1949

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Loc 2	58		Hughes	Litt	-	2 15	2 15	X	✓			
2	Pool 3	3235	1 PM	Donovan	Dykeman	-	3 25	3 25	X	✓			
3	Pool 4	3270		Knox	Thompson	2 55	-	-	✓				Dead up
4	Ass	3234		Reidy	Watson	3 05	-	-	✓				" "
5	Local	356		Rogers	Lambert	-	4 30	4 30	X	✓			
6	Pool 11	3240	3 10	Gray	Klapprich	-	4 30	4 30	X	✓			
7	No 5	3200		Alger	Zytnuy	4 00	-	-	✓	9-6			Dead up
8	No 3	3233		Colbourn	Ruley	4 35	-	-	✓				" "
9	Asst	3348		Mordini	Fink	-	8 30	8 55	X	✓			
10	Cab	3244		M Foley	Substitute	-	9 a	9 45	X	✓			
11	Asst	45 3		Hoffman		6 10	-	6 30	X	✓			Dead to Meeker
12	Yard	301		Grayson	-	6 30	-	6 55	X	✓			" "
13	Pool 5	3209		Seaton	Roy	6 55	-	-	✓				Dead up
14	Asst	454		Fyfe	-	7 a	-	7 45	X	✓			Turns
15	Yard	1596		Pearson	Smith	7 05	-	-	✓				Tieded up
16	Cab	90		Fraser	Buckenbuch	-	10 30	10 45	X	✓			
17	Cab	3207		Thomas	Fenuga	-	10 30	10 45	X	✓			
18	Pool	3240		Madara	Brady	-	12 30	12 50	X	✓			
19	Ass	3247		Glynn	Volbing	7 40	-	-	✓				Tied up
20	Eng	907		Fischer	Kanter	8 a	-	-	✓				" "
21	Yard	403		Meeker	-	11 45	-	1 20	X	✓			Turns
22	Loc E	302		Loft	-	11 20 a	-	11 45	X	✓			Turns
23	On 6	3343		Colbourn	Seeley	-	7 P	7 P	X	✓			
24	Eng	3157		Miller	-	2 50 p	-	12 40 a	X	✓			Turns
25	Pool 1	3236		Holmes	Goldsmith	11 40	-	-	✓				Tieded up
26	900	1596		Pearson	Smith	-	3 30 p	3 30 p	X	P			
27	One	3224		Reidy	Watson	-	11 30	11 30	X	✓			
28	Eng	907		Fischer	Kanter	-	5 20 p	2 20 p	X	✓			
29	Loc	56		Bedford	Pepper	11 35	-	-	X				Tied up
30	Asst	403	X 10	Meeker	-	4 50	-	4 55	X	✓			Turned
31	Pool	3224		Simpson	Abell	11 20	-	-	✓	9-6			Tieded up
32	Pool	3243		Wells	Bacon	5 25	-	-	✓	9-6			" "
33	On 4	3247		Glynn	Volbing	-	8 30 p	8 30 p	X	✓			
34	On 2	3248		Alger	Gedney	-	9 a	9 10	X	✓	15		Washington-Trumann
35	Quill	3237		Kinglish	Buelow	7 50	-	-	9-10				Tied up
36	Cab	3550		Blanchard	Drew	7 45	-	-	✓				" "
37	Ex	3241		Fisher	Lennon Co	7 50	-	-	9-10				" "
38	Loc	303		Bridleman	-	10 10	-	10 20	X	✓			Turned
39	Pool 6	3206		Hickey	Connell	11 15	-	-	9-6				Tied up
40	Yard	65		Durkee	Wilson	11 56	-	-	X				" "
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

X - 7
P - 1
W - 6

465-26

Plaintiff's Ex. 154-A

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service; or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-4-1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pull out									
11P	7a	3416	Palmer	Fish	-	-	-	-	-	-			
7a	3P	3416	Burg	Cowan	-	-	-	-	-	-	3:25 3P	-	Depot Return
3P	11P	3419	Heald	Russell		-	-	11:0P	3416 10:0P	-	9/5	1	
			East Bound	Thumps									
12a	7a	3208	Stigel	Jackson	-	-	-	-	-	2:25P			
7a	3P	3208	Bonnell	Robertson	6:0a	-	-	-	-	-		1	
6P	12M	3208	Swarts	Deacon	-	-	-	-	-	-			
			West Bound	Pull up									
11P	7a	3410	Ripley	Brown	-	1:0a	3434 1:0a	-	-	-		1	
7a	3P	3434	Mosher	Jeffers	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Shepard	-	-	-	11:0P	3434 10:0a	-	9/5	1	
			West Bound	Thumps									
1:0a	1:0P	3104	Arnold	Stuckey	5a	-	-	-	-	1:0P		1	
4P	12M	3104	Mahan	Cockney	4P	-	-	-	-	12:0a	9-5	1	
			Grace Bumpers										
7a	3P	3419	Kelly	White	7a	-	-	-	-	3416 3:0		1	Depot 3419
			Thumps Bumpers										
8a	3:0a	3410	Ripley	Risinger	8a	-	-	-	-	-		1	
			Rip Leads										
3:0P	4P	3410	Ripley	Risinger						4P			

E T 2
W - 4
M - 2/8

MID-NIGHT ENGINE SITUATION

A None

B 366-904-3216-3211-3210-3216-3248-3419

C 316-3202-3235-3244-3240-3348

D 3104-3208-3214-3223-3410-3416-3419-3484

E None

465-27

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY ◊ Plaintiffs Ex. 154-

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD · MAYBROOK ENGINE TERMINAL · DATE Apr 4. 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 7	3205	11 1/2 P ✓	Knox	J Thompson	-	1 30 a	1 30 a	X	7			
2	Pool 5	3209	12 3/4 a ✓	Traber	Roy	-	3a	3a	X	7			
3	LH	95		Decker	Wilson	12 30 a	-		X				Dead up
4	Pool 1	3236	✓	C. Holmes	Goldensack	3 50 a		4 40 a	✓	7			Turn + Water
5	Ab1	3225		Dooley	Pierce	3 1/4 a	-	-	✓				Dead up
6	No 5	3243		Gildersleeve	Anderson	4 40 a	-	-	✓				" "
7	No 3	3314		Shubarr	Lessner	6a	-	-	✓				" "
8	OB 7	3343	✓	Simpson	Abell	-	8 30 a	8 30 a	X	7			
9	OB 6	3226	✓	Bruce	Moore	-	9a	9a	X	7			
10	Lark	201	✓	Bryson	-	6 35 a		6 40 a	X	7			Turn + Water
11	Pine	3147	✓	Franke	-	7 0 a	-	7 30 a	X	7			" "
12	957	1596		Pearson	Smith	7 05 a	-	-	✓				Tied up
13	Bo 1	3245		Detrick	Leary	7 05 a	-	-	✓				" "
14	Orw	456	✓	Owen	-	7 33 a	-	7 45 a	X	7			Turn + Water
15	Hw	460	✓	Fife	-	8 [illegible]		8 25 a	X	7			" + "
16	Pool 4	3237	✓	Coghlan	Walsh	8 25 a	-	9 25 a	✓	7			Turn Water coal + Sand
17	CoH	77		Purcell	Turner	8 45 a	-	-	X				Tied up
18	Pool 6	3206		Beckley	Dynes	9 40 a	-	-	✓				" "
19	Pine	1003	✓	Estelle	Coebel	10 5 a	-	10 25 a	X	7			Turn
20	Orw	403	✓	Decker	-	10 36 a	-	10 45 a	X	7			Turn + Water
21	CoH	95	✓	Decker	Wilson	-	10 25 a	10 35 a	X	7			
22	Ab4	3241	✓	Fuchs	Sweeney	-	10 35 a	10 45 a	X	7			
23	Oz 7	3243	✓	Dolly	Bacon	-	12 30 p	12 30 p	X	7			
24	Ab6	3314	✓	Sheehan	Gussler	-	2 p	2 p	X	7			
25	958	1596	✓	Parsons	Lynch	-	8 35 p	3 30 p	X	7			
26	Ab7	3225	✓	Dooley	Pierce	-	4 25 p	4 30 p	X	7			
27	Orw	403	✓	Decker	-	2 25 p	-	2 55 p	X	7			Turn + Water
28	Erie	3172	✓	Yenkley	-	2 10 p	-	3 25 p	X	7			" +
29	LaH	72	✓	Purcell	Tammen	-	3 20 p	3 25 p	X	7			
30	Bo 5	3240		M Foley	Jones -	2 45 p	-	-	V 8	9-5			Tied up
31	Bo 7	3348		Woodin	Delaney	HP	-	-	V 8	9-5			" "
32	On 4	3245	6P ✓	Detrick	Leary	-	8 30 p	8 30 p	X	7			
33	On 2	3221	" ✓	Reynolds	Hildenbrand	-	9P	9P	X	7			
34	LaHe	58		Hughes	Cobb	5 45 p	-	-					Tied up
35	Eo1	3240		Doherty	Brady	6P	-	-	✓				" "
36	Local	356		Sisson	Lounsbach	6 30 p	-	-	9-5				" "
37	Ex	3202	✓	Fraser	Gunn	6 30 p	-	-	V 8	9-5			" "
38	Eng	306	✓	Gildersleeve	-	8 25 p	-	8 10 p	X	7			Turn
39	Pool 6	3206	✓	Hickey	Purcell	-	10 P	10 P	X	7			
40	Rock	2352	✓	G. Burns	Heusler	-	11 P	11 P	X	7			
41	Pool 3	3235		Donovan	DeCesmay	7 20 p	-	-	9-5				Tied up
42	Pool 4	3249	✓	Grant	Klapproth	7 55 p	-	-	9/8	9-11			" "
43	Erie	3368	✓	Cuddeback	[illegible]	P [illegible]	-	8 05 p		7			Turned
44	Jane	307	✓	Buzzard	-	10 20 p	-	10 30 p		7			"
45	LH	90		Tolbert	Swackhamer	11 1/4 p	-	-					Laid up
46													
47													
48													
49													
50													
51													
52													
53													
54													

2-27
P-1
W-0

27

465-28

Plaintiff's Exhibit 15b

(Photos opposite)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY SUPERVISOR'S ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/23 19[illegible]9

	ENGINE No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ASSIGNED	TIME ORDERED	TIME DEPTD	COAL ONBRD	ENGINE TURNED ONBRD	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 2	3285	11:45	✓	Mercer	Chandler	—	1:30a	1:30a	X	7			
2	Loc 1	57		✓	Bedford	Piper	—	1:40a	1:40a	X	7			
3	Loc 1	305		✓	Buttermore		12		12:45p		7			Turn Upon Channel
4	Pool 11	3249	1:45	✓	Barnes	Clement	—	4:30	4:45	X	7			
5	Loc 1	3221			Dooley	Pierce	2:50a	—	—	9-4				Tied up.
6	Pool 12	5236		✓	Heath	Purcell	—	6:00	6:00	X	7			
7	Loc 5	3211			Hartwell	Lyndberg	4:30	—	—	✓				Tied up.
8	Loc 2	3342		✓	Daley	Fuerig	—	8:20a	8:45	X	7			
9	Loc 6	3550		✓	Bunn	Mohr	—	9:00	9:00	X	7			
10	Loc 2	309		✓	Buggeln		6:35		6:40a	X	7			Turn
11	Loc 3	3345			Abraham	Brooks	6:35	—	—	✓				Tied up.
12	Loc 1	3281		✓	Franks		7:25	—	7:25	X	7			Turn & Water
13	957	1596			Pierce	Smith	7:15	—	—	8/26				Tied up
14	Asst	95		✓	Dickie	Watson		10:30	10:30	X	7			
15	Loc 4	3241		✓	Forbes	Sommers		10:30	10:30	X	7			
16	Loc 2	3216		✓	Baltz	Stewart		12:30	12:30	X	7			
17	Loc 1	3245			Detrick	Lesley	7:25	—	—	✓				Tied up
18	Loc 4	73			Purcell	Trumbower	8:25	—	—	X				" "
19	Loc W	459		✓	Reeves	—	9:15	—	9:25	X	7			Turn & Water
20	Loc W	451		✓	Fox	—	10:00	—	10:15	X	7			" " "
21	Pool 5	3205			Tibbetts	Roy	10:35	—	—	X				Tied up
22	Loc C	306		✓	Biggam	—	11:45	—	11:55	X	7			Turn
23	Loc 6	3345		✓	Abraham	Gaudlin		2:30	2:30	X	7			
24	Hopper	3211		✓	Lumsby	Anderson	1:00	3:15	3:15	X	7			Hopper to Return with Engine 3547
25	Loc W	305		✓	O'Mark	—	12:45		12:55	X	7			Turn & Water
26	950	554		✓	Pierce	Smith		3:35	3:35	X	7			
27	Loc Y	3205		✓	Bailey	Pierce		4:30	4:30	X	7			
28	Pool 1	3229			C. Williams	Lockwood	3:30	—	—	4-23				Tied up
29	Pool 4	3237			Eggsbud	Dorton	2:00	—	—	8-24				" "
30	Loc N	73		✓	Purcell	Trumbower	—	5:30	5:30	X	7			
31	Loc 7	3348			Nordin	Shepard	3:40	—	—	✓				Tied up
32	Loc W	305		✓	O'Neil	—	4:30		4:35	X	7			
33	Loc C	3179		✓	Clark	—	5:30		5:30	X	7			Turn & Water
34	Loc E	58			Flynn	Loft	5:00	—	—	X				Tied up
35	Loc 1	3240			Patton	Brady	5:30	—	—	✓	8	24		" "
36	Loc 5	3244			Kane	Foley	5:30	—	—	✓				" "
37	X	3347			Bennett	Anderson	6:00	—	—					" "
38	Local	356			Pizzano	Lenderick	6:30	—	—	8-24				" "
39	Loc 4	3245		✓	Patrick	Ruley	—	8:30	8:30	X	7			
40	Loc 7	3217		✓	Fitzsimmons	Stuckey	—	9:00	9:00	X	7			
41	Loc C	3350			Hardwick	—	7:25		7:30	X	7			Turn & Water
42	Pool 5	3237	7:30	✓	Foster	Roy	—	10:00	10:00	X	7			
43	Loc E	304		✓	Burdsmen	—	9:30		8:40	X	7			Turn & Water
44	Loc 1	3248			Keim	Bumgarner	8:00	—	—	✓				Tied up
45	Pool 6	3219			Hinckley	Bumgarner	8:30	—	—	8-24				" "
46														
47														F - 27
48														D - 1
49														W - 0
50														
51														
52														

(1)

467

Form [illegible]

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 153

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified, including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 22 19 9

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pick up										
11P	7a	3418	F. Holmes	Carrow									
7a	3P	3418	Robinson	Sweeney							4½ P		
3P	11P	3419	Doolittle	Rivenet		11P	3418 / 1030P			Rel'd at		1	Changed w/ Jr. to for 3419
			East Bound Dumps										
Lvn	7a	3238	Hildenbrand	Dewo						3202			
7a	3P	3238 V	Anna	Fiat	6a							1	
1P	1½	3202	Heckman	Dawe									
			West Bound Pick up										
11P	7a	3419	O Riley	D Krum		12 5P	3434 / 1200					1	
7a	3P	3434 X	Mann	Jeffers	6a							1	
3P	11P	3434	Brian	Lindsay				1110P	3419 / HP		8/23	1	
			West Bound Dumps										
5304	1304	3223 V	Smith	Thompson	5a					1 2P		1	
4P	1½	3223	Kleckner	Decker	4P				1½ 10P		8/23	1	
			Mine Switcher										
7a	3P	3449	Kelly	Sweeney	7a					2 4P / 3P		1	Changed w/ Jr. to for 448
			Stop Switches										
8a		3214	Ripley	Decker	8a					4P	7P Clear	1	
			Ex Switcher										
11P	7a	3214	Stage	Fish	8a / 11P					7a		1	Coal Wagon Report Fire Cleaned
							5 Ton						
													E - 2
													W - 1
													M - 3 / 10

MID-NIGHT ENGINE SITUATION

A 3235 - 3342 - 3550

B 3104 - 3202 - 3209 - 3210 - 3217 - 3224 - 3243

C 3216 - 3236 - 3241 - 3249 - 2352 -

D 3208 - 3214 - 3223 - 3418 - 3419 - 3434

Stored

(9)

467-1

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex. 153-

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except Work as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/22 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 5	3211	11:30	Jones	Stewart	-	12:00 a	12:00 a	X	7			
2	GH	90		Jones	Spencertown	12:30 a	-	-	X				Tied up
3	Pool 1	3206	1:30 a	Coffman	Goldsmith	-	4 a	4 a	X	7			
4	Lift 2	69		Hess	Cobb	-	3:30 a	3:30 a	X	7			
5	" 2	305		Buzzard		2 WT		2:00 a	X	7			Town
6	Local	356	2 WT	Simson	Sanborn	-	4:30 a	4:30 a	X	7			
7	Mon	554		Neald	Richardson	-	5:30 a	5 WT	X	W			
8	Ro	3225		Martin	Miller	3:25 a	-	-	✓				Tied up
9	Mo 5	3218		Algar	Sidney	4:10 a	-	-	✓				" "
10	Pool 4	3337	3:30 a	English	Dorlon	-	6 a	6 a	X	7			
11	Ro	3213		Burr	Anderson	6:15 a	-	-	8 WT				Tied up
12	OB 2	3344		Worden	Shepard	-	8:30 a	8 WT	X	7			
13	OB 6	3207		Dow	Watts	-	9 a	9 a	X	7			
14	Bo	3247		R Bunnell	Yarbrough	6:15 a	-	-	✓				Tied up
15	OW	460		Johnston		6:55 a	-	7:15 a	X	7			Town + Mail
16	Cons	3160		Drake	—	7 CW	-	7:15 a	X	7			" "
17	951	1596		Burgess	Sweetser	7 WT	-	-	✓				Tied up
18	OW	459		Mc Cann	—	7 a	-	7 WT	X	7			Town + Water
19	CNJ	878		Campbell	Hunter	8 WT	-	-	X				Tied up
20	OB 3	3314		Rockwell	Boyce	9 a	-	-	X				"
21	SH	401		Jensen	Sugarkenbach		10 WT	10 WT	X	7			
22	OB 4	3246		Wynn	Burgess		10 WT	10 WT	X	7			
23	OB 7	3240		Alton	Brady		12 WT	12 WT	X	7			
24	OW	405		Decker	—	10 WT		10 WT	X	7			Town + Water
25	Conn	306		Bryan	—	10 WT	-	11 WT	X	7			Town + Water
26	Pool 7	3315		Hickey	Burgess		2 WT	2 WT	X	7			
27	9 SW	1596		Purdy	Smith		3 WT	3 WT	X	P			
28	OB 7	3225		Martin	Miller		4 WT	4 WT	X	7			
29	Pool 3	3235		Donovan	Chandler	2 WT	-	-	✓	8-13			Tied up
30	CNJ	878		Campbell	Fowler	-	5 WT	5 WT	X	7			
31	Erie	3171		Stuart	-	3 WT		3 WT	X	7			Town + Water
32	OW	404		Decker	-	3 WT		3 WT	X	7			
33	BO 5	3550		Brush	Moore	3 WT	-	-	✓				Laid up
34	OB 6	3219		Brobil	Ross	-	6 a	6 a	X	7			
35	10 7	3344		J Daly	Finigan	4 WT	-	-	✓				Laid up
36	York	554		Neald	Richardson	4 WT	-	-	8-13				"
37	OB 4	3247		R Bunnell	Yarbrough	-	8 WT	8 WT	X	7			
38	OB 2	3215		Algar	Sidney	-	9 a	9 a	X	7			
39	Bo 1	3236		Stutz	Hampton	6 WT	-	-	✓	8-13			Laid up
40	CNJ	3241		Fisher	Lawrence	7 a	-	-	✓	8-13			" "
41	NHL	57		Bedford	Piper	5 WT	-	-	X				" "
42	Erie	3160		Cadsback		8 CW	-	8 WT	X	7			Turned & watered
43	Pool 11	3216		Barnes	Clements	7 WT	-	-	8-13				Laid up
44	NHL	301		Lobb	-	8 WT		8 WT	X	7			Town + Water
45	Pool 2	3249		W Delaney	Russell	9 WT	-	-	8-13				Laid up
46	GH	95		Decker	Wilson	11:50 a	-	-	X				
47													
48													
49													
50													
51													
52													
53													
54													

J - 12
P - 1
W - 1

(27)

467-2

Form 1480

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 153

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified (including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE Aug 21 1952

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHUTE	ENGINE TURNED	REMARKS
			E Bound Pull out										
11P	7a	3418	F Holmes	Barrows									
7a	3P	3416	Heath	Pomeroy							4:35 P.		
3P	11P	3419	Hazbitte	F Priest		11P	3418 10 Jet					1	Foreman changed in yard for 3417
			E & E Kunip										
11P	2a	3214	Devink	Dorris						2:20a			
7a	3P	3208	Stage	Peterson	6Pa							1	
6P	12a	3201		Davis									
			West Bound Pull up										
11P	7a	3208	A Foley	A Krum		2:15A	3434 13P					1	
7a	3P	3434	Mainer	Jeffers									
3P	11P	3434	Mulligan	Shepard		11:05P	3419 11P				7:45A	1	
			West Bound Hump										
5:30a	1:30P	3223	Smith	Thompson	5Pa					1:25P.		1	
4P	12a	3223	Shelton	Decker	4P.					12:20a	8/22	1	
			Main Gw.										
7a	3P	3419	Kelly	Frost	7a					3218 3P.		1	Changed from 3P for 3418
			Eng Serv -										
8a	3:30P	3214	Ripley	Richardson	9a							1	
3:30	4P.	3214	Ripley	Richardson						4P	8/22		E — 2 W — 4 M — 2 8
			Rip Track										

MID-NIGHT ENGINE SITUATION

A 554 - 3207 - 3211 - 3344

B 2352 - 3202 - 3209 - 3217 - 3219 - 3224

C 356 - 3206 - 3210 - 3237 - 3240 - 324P

D 3201 - 3214 - 3223 - 3418 - 3419 - 3434

S Stored

(8)

467-3

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 152

INSTRUCTIONS: This report is to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any service except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9/21 1929

	YARD No.	ENGINE No.	TIME ASSIGNED	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	L&H	95		Wilson	Storms	12 10a	—	—	X				Tied up.
2	Yard	3243	12 15a	Burd	Redmond	—	2 30a	2 30a	X	X			
3	L&H	56	✓	Carpenter	Pyle	—	2 40a	2 40a	X	X			
4	Yard	3234		Brown	Ellis	3 15a	—	—					Tied up.
5	Main	554	✓	Manning	Stewart	—	5 30a	5 30a	X	X			
6	Yard	3234	4 30a ✓	Gray	Clements	—	6 40a	6 40a	X	X			
7	Ex	3286		Bennett	Dunlevy	4 45a	—	—	✓				Tied up
8	No 5	3221		Fitzgerald	Tiddenham	4 50a	—	—	✓				" "
9	Ewi	3161	✓	Shirley		6 05a		6 15a	X	X			Turn + Water
10	No 3	3329		Fuller	Gerecke	6 a	—	—	✓				Tied up.
11	OB2	3348	✓	Burpee	Leary	—	8 30a	8 45a	X	X			
12	OB6	3244	✓	Kane	Foley	—	9 a	9 a	X	X			
13	Oan.	453	✓	Hoffman	—	7 45a	—	7 45a	X	X			Turn + Water
14	951	1596		Pelham	Lynch	7 05a	—	—	✓				Tied up
15	B01	3245		Detroit	Dooley	6 45a	—	—	✓				" "
16	L+N 5	301	✓	Bryant		7 35a	—	7 45a	X	X			Turn
17	Yard 2	3278		Daley	Akerly	7 55a	—	—	✓				Tied up
18	Oan	457	✓	Markham	—	7 55a		8 45a	X	X			Turn + Water
19	Pool 5	3211		Tealer	Mendork	8 15a	—	—	X				Tied up
20	L+N	72		Purcell	Timmins	8 55a	—	—	X				" "
21	L+N	98	✓	Wilson	Storms		10 35a	10 35a	X	X			
22	OB4	3241	✓	Fuller	Langevine		10 35a	10 35a	X	X			
23	OB2	3236	✓	Bell	Bradshaw		12 40p	12 45p	X	X			
24	Yard	304	✓	Decker	—	10 55a	—		X	X			Turn + Water
25	Brac	305	✓	Bryan	—	12 45p	—	12 50p	X	X			Turn
26	Pool 1	3216		Williams	Goldsmith	12 50p	—	—	✓				Tied up
27	Enb	3329	✓	Fuller	Gerecke		2p	2p	X	X			
28	N+W Light	3220	✓	Lounds	Parsons		3p	3p	X	X			
29	950	1596	✓	Pelham	Lynch		3 35p	3 35p	X	X			Ct to Hope.
30	Oan	3241	✓	Burpee	Ellis		4 30p	4 40p	X	X			
31	L+N	91	✓	Decker	—	1 45p	—	1 45p	X	X			
32	Conn	304	✓	Dever	—	3 20p		3 30p	X	X			Turn + Water
33	Mark	554		Manning	Stewart	3 45p	—	—	8/7 ✓				Tied up
34	L+N	72	✓	Purcell	Timmins	—	5 20p	5 20p	X	X			
35	Yard	3216	4p ✓	W Delaney	Purcell	—	6p	6p	X	X			
36	Yard	3207		Dever	Ward	4 05p	—	—	✓				Tied up
37	B07	3344		Noonan	Stuckey	4 15p	—	—	8/4 ✓				" "
38	Enw	3187	✓	Todd	—	4 25p		4 35p	X	X			Turn + Water
39	OW4	3246	✓	Detrick	Dooley	—	8 30p	8 35p	X	X			
40	OW2	3249	✓	Fitzgerald	Mendork	—	9p	9p	X	X			
41	E01	3246		Butler	Brady	4 50p	—	—	✓				Tied up
42	Mark	3248		Brown	Flanagan	6 15p	—	—	✓				" "
43	Yard	58		Horn	Lott	6 15p	—	—	X				" "
44	X	3214		Barnes	Carson	7p	—	—					" "
45	Yard	356		Benson	Lambert	7 15p	—	—					" "
46	Enw	3154	✓	Goldsmith	—	8p		8 10p	X	X			Turned + heated
47	L+N	306	✓	W Jones	—	8 20p		8 25p	X	X			"
48	Yard	3237		Hyland	Drake	8 40p	—	—	8/7 ✓				Tied up
49	L+N	301	✓	Bradshaw	—	9 10p		9 35p	X	X			Turn + Water
50	Yard	3206		Hickey	Reininger	10 35p	—	—	8/7 ✓				Tied up
51													E — 1
52													B — 1
53													W — 1

467-4

Form 1000-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 20 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL ON HAND	ENGINE TURNED	REMARKS
			E Bound	Pull out									
11P	7a	3418	J Holmes	Parsons		11:55P	3455 / 1305 C / 3455	1:30A	1412 / 1110			V	
7a	3P	3418	Jackson	Conaway		11:10P					5 Tons	1	remarks
3P	11P	3419	Doolittle	F Burnett				11:10P	3418 / 10:30P	6	8/21	1	Changed in yard to 3419
			E Bound										
12M	7a	3214	Hickson	Dorsa						3:20a			
7a	3P	3214	Stage	Robertson	7a							1	
6P	12M	3214	Hellerman	Davis									
			West Bound	Pull up									
11P	7a	3419	D Daly	D Krum		2a	3434 / 1:30a					1	
7a	3P	3434	Misner	Jeffers									
3P	11P	3434	Mullyan	Shepard		11:10P	3208 / 10:30P				8/21	1	
			West Bound	Nunes									
5:20a	1:20P	3223	Smith	Thomson	5a					1:30P		1	
4P	12M	3223	Shuler	Richardson	4P					12:30a	8/21	1	
			Mike Dw-										
7a	3P	3419	Kelly	White	7a					1:30P		1	Changed to 3208

MID-NIGHT ENGINE SITUATION

A 554 - ~~3224~~ - 3348

B 2352 - 3104 - 3202 - 3209 - 3217 - 3219 - 3224

C 3241 - 3243 - 3249 - 3244

D 3208 - 3214 - 3223 - 3418 - 3419 - 3434

E-5
W-4
M-1
10

(9)

467-5

Form 1214-A

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 152

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 20 19[illegible] E

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	LvNL	58	105	✓	McCoy	Lobb	-	12 35	12 35	X	✓			
2	LvN	90			Jensen	Bass	12 30	-	-	X				Tied up -
3	Pool 6	3246	12 35	✓	Nancy	Reinger	-	3	3	X	✓			
4	Pool 3	3226	7 10	✓	Donovan	Chandler	-	4	4	X	✓			
5	A01	3225			Dooley	Pierce	2 45	-	-	✓				Tied up
6	Local	356		✓	Sisson	Lawton	-	4 30	4 30	X	✓			
7	Deadhead	3411		✓		Houston	-	4 30	4 30	X	✓			Towed by 3516
8	N05	3215			Alger	Gedney	3 30	-	-	✓				Tied up -
9	Wm	554		✓	Nesbit	Frost	-	5 20	5 00	X	W			
10	N03	3214			Brotzel	Ross	N 30	-	-	✓				Tied up.
11	Lv NL	301		✓	Buggeln	-	5 50	-	5 55	X	✓			Town
12	Ot 2	3342		✓	Worden	Sweeney	-	8 30	8 35	X	✓			
13	OB 6	3245		✓	Bass	Moore	-	9	9	X	✓			
14	Erie	3193		✓	Wood	-	7 17	-	7 25	X	✓			Town + Water
15	bkw	457		✓	Dwyer	-	8 15	-	9 27	X	✓			" " "
16	NH	904			Campbell	Hunter	9	-	-	✓				Tied up
17	Bl 01	3247			Slipman	Rodney	8 43	-	-	✓				" "
18	LvN	90		✓	Tenison	Buck	-	10 30	10 35	X	✓			
19	N04	3206		✓	Wilson	Hawkes	-	10 35	10 45	X	✓			
20	NLV	3240		✓	Patten	Brady	-	12 30	12 40	X	✓			
21	bkw	455		✓	Fife	-	9 45	-	10 15	X	✓			Town + Water
22	Erie	306		✓	Bayeaux	-	10 15	-	10 30	X	✓			Town + Water
23	bkw	405		✓	Dakers	-	10 15	-	11 15	X	✓			" " "
24	0n6	3311		✓	Brainerd	Bass		2 P	2 P	X	✓			P
25	Erie	91		✓	Clarke	-	11 25	-	11 35	X	✓			Town
26	916	1596		✓	Pierson	Smith		3 35 P	3 35 P	X	✓			
27	bkw	3206		✓	Dooley	Pierce		4 35 P	4 35 P	X	✓			
28	Pg 5	3244		6	Frank	Foley	2 13	-	-	✓				Tied up.
29	Erie	3181		✓	Mitchell	-	3 15		3 25	X	✓	2		Town + Water
30	NH	907		✓	Campbell	Hunter	-	5 20	5 30	X	✓			
31	204	3348			Simpson	Leary	3 55	-	-	✓	4 55			Tied up
32	B01	3243			Bilke	Cross	4 35	-	-	✓	4 55			" "
33	NH	554			Nesbit	Frost	4 00	-	-	8-7				" " "
34	Erie	3189		✓	Mills	-	5 15		5 25	X	✓			Town + Water
35	NH	3241			Fisher	Lawrence	6 15	-	-	✓				Tied up
36	NLV	3247		✓	Ely Jr	Vosburgh	-	6 50	8 50	X	✓			
37	NLV	3200		✓	Alger	Gedney	-	9 P	9 P	X	✓			
38	Lv NL	56			Carpenter	Piper	6 10	-	-	X				Tied up
39	Erie	3189		*	Mills	-	9 15		9 25	X	✓			Water
40	Pool 11	3249			Tracy	Clements	9 10	-	-	✓				Tied up
41	Erie	3187		✓	Cruikshank	-	10 15		10 35	X	✓			Town + Water
42	Lv NL	303		✓	W. Jones	-	10 15		10 25	X	✓			" "
43	Lv N4	153		✓	Bradleman		11 25		11 30	X	✓			"
44	951	1596			Pierson	Smith	7 15	-	-	✓				Tied up.
45														E - 98
46														P - 1
47														W - 1
48														
49														29
50														
51														
52														
53														
54														

467-6

Form 1975-C

THE NEW YORK, NEW HAVEN, AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 153

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** Aug 19 192 9

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			E Bound Pull out										
11P	7a	3418	F. Holmes	Parsons									
7S	3P	3418	Lechner	Tyrrany							5 1/2		
3P	11P	3419	Ducklitle	F Brunt		11P	3418 10 3P					1	Yesterdays Engineer Jno A on 3419
			E B Runs										
12M	7a	3214	Hackmen	Davis						2105			
7S	3P	3214	Brooks	Robertson	6 7/8							1	
6P	12M	3214	Hackman	Davis									
			West Bound Pull up										
11P	7a	3208	A Foley	A Brunt		135a	3434 10 3P					1	
7S	3P	3434	Munter	Jeffers									
3P	11P	3434	Mulligan	Shepard		11 10P	3419 11 3P					1	
			Did not work	West Bound Hump									
4P	12M	3223	Hackman	Decker	4P					12M	AM	1	
			Mess. Dlv.										
7a	3P	3419	Kelly	White	7M					3419 11 3P		1	Engineer on 3419
			Ex. Dlv.										
3P		3208	Ripley	Bacon	8M					4P		1	
													E - 2
													W - 3
													M - 2
													7

MID-NIGHT ENGINE SITUATION

A 554 - 3248 - 3226 - 3342

B 3852 - 3104 - 3202 - 3209 - 3217 - 3219 - 3224

C 356 - 3200 - 3206 - 3240

D 3208 - 3214 - 3223 - 3418 - 3419 - 3434

In Shop 3411

Stored

(1)

467-7

Plaintiffs Ex. 153

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 1/19 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	OPW	458		√	Halstead		1240 a		1250 a	X	7			Turn + water
2	Ro.	3219		√	Marlin	Miller	1245 a	—	—	8-24				Tied up -
3	Port 4	3397	2 p	√	Engine	Keating	—	5 a	5 a	X	7			
4	Lowe	56		√	Carpenter	Pepin	—	5 a	5 a	X	7			
5	Port 6	3248		√	Hickey	Passenger	350 a	—	—	√	7			Tied up -
6	Worc	554		√	Burr	Anderson	—	5-30 a	5-30 a	X	7			
7	NOS	3322			Shehan	Gussie	6 a	—	—					Tied up
8	OB 2	3345		√	Simpson	Shaw	—	830 a	8 a	X	7			
9	OB 6	3207		√	Dow	Jones	—	9 a	9 a	X	7			
10	Erie	3160		√	Kronse		615 a		625 a	X	7			Turn + water
11	951	1596			Purcell	Smith	7 a	—	—	√				Tied up
12	OPW	406		√	Decker		8 a	—	9 a	X	7			Turn + Water
13	Lowe	95		√	Wilson	Stearns		10 a	10 a	X	7			
14	OB 4	3341		√	Fuller	Lawrence		10 a	10 a	X	7			
15	OB 7	3343		√	Belle	Evans		12 p		X	7			
16	Port 3	3334			Donovan	Chandler	10 a	—	—	√				Tied up
17	DPW	454		√	Jackson	—	10 a	—	10 a	X	7			Turn + water
18	OB 6	3337		√	Sheehan	Gussie		2 p	2 p	X	7			
19	DPW	454		√	McCune	—	11 a		11 a	X	7			Turn + Water
20	Lo H	77			O'Brien	Timmins	11 a	—	—	X				Tied up
21	952	1596		√	Purcell	Smith		3 p	3 p	X	7			
22	OB 7	3334		√	Martin	Miller		4 p	4 p	X	7			
23	Shop	3322		√	—	Stewart		4 p	4 p	X	7			Tied up this P.
24	Bos	3376			Buckley	Moore	2 p	—	—	√	7			Tied up
25	OPW	406		√	Decker	—	3 p		3 p	X	7			Turn + Water
26	Ore	3181		√	Riddle	—	3 p		3 p	X	7			
27	BO 7	3347			Wooden	Richardson	3 p	—	—	√	7			Tied up
28	Ebb	3340			Pelton	Brady	3 p	—	—					
29	Lowe	58			Lackey	Lobb	3 p	—	—	X				
30	Wor	554			S Burr	Anderson	5 p	—	—	8 p				
31	Lowe	303		√	Lobb	—	5 p		5 p	X	7			Turn + Water
32	OPW	3345		√	Debris	Lucky		8 p	8 p	X	7			
33	OPW	3371		√	J Fitzgerald	Gildersleeve		9 p	9 p	X	7			
34	Low	74		√	O'Brien	Timmins		8 p	8 p	X	7			
35	Local	356			Dineen	Lenback	6 p	—	—	8 p				Tied up -
36	BO 7	3306			Winn	Hawks	6 p	—	—	√				" "
37	Lowe	305		√	Bradburn	—	9 p		9 p	X	7			Turn + Water
38	Erie	3377		√	Cruddback		9 p		9 p	X	7			" "
39														
40														7 - 23
41														P - 1
42														W - 1
43														
44														
45														
46														
47														
48														
49														
50														
51														
52														
53														
54														

467-8

Form 1672-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service; or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 18 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dept'd	TIME Arrived	TIME Dept'd	TIME Arrived	TIME Dept'd	TIME Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			E Bound Pull out										
11P	7a	3418	F Holmes	Parsons									
7a	3P	3418	Sullivan	Pinney							7 55 P	-	see route
3P	11P	3419	Doolittle	F Bennett		11 10P	3418 12 30P				8-19	/	Handed in yard pm 3419
			E Bound Hump										
12	2a	3224	Huckman	Davis						7 15a			
7a	3P	3214	Stage	Robinson	6 45a						8-19	/	
6P	12m		Huckman	Dunn									
			West Bound Pull up										
11P	7a	3208	D Foley	V Krum		12 30a	3434 12 30P					/	Changed engine
7a	3P	3434	Mainer	Jeffers									
3P	11P	3434	Milligan	Shepard		11 10P	3208 10 00a				8-19	/	
			West Bound Hump										
3 30a	1 30P	3223	Dinty	Thompson	5a					1 25P		/	
4P	12m	3223	Sheehan	Stickney	4P					12 20a	8-19	/	
			Mine Switcher										
7a	3P	3419	Kelly	White	7a					2 45P		/	Changed engine pm 3418
			E Switcher										
7a	3P	3434	Burns	Houston		12 30a	3208 12 30P			7a	/	/	Changed yd
8a	3P	3208	Heard	Bacon	8a							/	
			Rip Tracks										
3P	4P	3208	Heard	Bacon						4P			8 2 10 4 m 2 9

MID-NIGHT ENGINE SITUATION

A 554 - 3221 - 3237 - 3241 - 3245

B 2852 - 3104 - 3200 - 3202 - 3209 - 3217 - 3224 - 3411

C 3207 - 3248 - 3345

D 3208 - 3214 - 3223 - 3418 - 3419 - 3434

Franklin 3222

Stored

467-9

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 18 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 6	3248	1715 ✓	Heeney	Reisinger	—	230 a	230 a	X	✓			
2	L+N	90		Jenne	Swayze	1205 a	—	—	X				Tied up
3	Eye	3235		Daley	Fudge	1215 a	—	—	✓				" "
4	Pool 3	3234	145 a ✓	Donahue	Chandler	—	4 a	4 a	X	✓			
5	Ao 1	3225		Brown	Ellis	3 a	—	—					Tied up
6	Pool 11	3249	310 a ✓	Doe	Clements	—	530 a	530 a	X	✓			
7	L+W 6	55	✓	Kenyon	Lott	—	6 a	6 a	X	✓			
8	L+E	30	✓	Beaulieu		550 a		550 a	X	✓			Turn
9	N05	3216		Burr	Gulestein	6 a	—	—	✓				Tied up
10	W3	3314		Baker	Guaraya	8 a	—	—	✓				
11	1732	3248	✓	Wood	Richardson	—	832 a	832 a	X	✓			
12	1136	3244	✓	Kane	Foley	—	9 a	9 a	X	✓			
13	O+W	453	✓	Owen	—	710 a	—	723 a	X	✓			Turn + Water
14	951	1596		Pierson	Smith	715 a	—	—	✓				Turn up
15	B01	3245	✓	Detweiler	Hawley	729 a	—	—	✓				
16	Erie	3159	✓	Franks	—	815 a	—	930 a	X	✓			Turn + Water
17	Oew	458	✓	Hoffman	—	9 a		915 a	X	✓			Turn + Water
18	CTG	884		Campbell	Kessler	940 a	—	—	✓				Tied up
19	Low	90	✓	Tenen	Lunger		1132 p	1032 p	X	✓			
20	0134	3206	✓	Mussi	Walsh		1032 p	1030 a	X	✓			
21	OEV	3240	✓	Pilla	Brady		1232 p	1230 p	X	✓			
22	Low E	301	✓	Bugnard	—	1015 a	—	1012 a	X	✓			Turn + Water
23	On 6	3270	✓	Brabeck	Hannya		2 P	4 P	X	✓			
24	Pool 5	3211		Tootle	Ray	1151 p	—	—	✓				Tied up
25	Erie	304	✓	Decker		1234 p		1243 p	X	✓			Turn + Water
26	Pool 7	3314	✓	Knoll	Akerly	—	2 P	2 P	X	✓			
27	950	1596	✓	Pierson	Smith	—	351 p	332 p	X	P			
28	Pool 11	3241	C Kalmus		Hildemill	1 P	—	—	✓	18-19			Tied up
29	Ao 2	3225	✓	Brown	Ellis		430 p	430 p	X	✓			
30	NH 7	3216	✓	Daley	Finnegan		5 P	✓ P	X	✓			
31	Erie	3160	✓	Stiles	—	315 p		330 p	X	✓			Turn + Water
32	B07	3345		Simpson	Brown	3 p	—	—	✓	18-19			Duck up
33	EQ1	3209		Dalkin	Covino	315 p	—	—					" "
34	OH J	884	✓	Campbell	Kessler	—	6 P	6 P	X	✓			
35	B65	3207		Dorr	C Jones	506 p	—	—	✓				Tied up
36	Pool 5	3211	510 p ✓	Tuttle	Ray	—	8 P	8 P	X	✓			
37	NH 1	3217		Fisher	Lawrence	645 p	—	—					Duck up
38	Erie	3159	X	Ward	—	805 p		8 12 P	X	✓			Turn + Water
39	Pool 1	3235	8 P ✓	C Holmes	Goldsmith	—	10 P	10 P	X	✓			
40	HWE	56		Carpenter	Piper	6 30 p	—	—	X				Tied up
41	Pool 4	3243		English	Linsberg	8 15 p	—	—	✓				" "
42	HWE	153	✓	Brayton	—	915 p		930 p	X	✓			Turn + Water
43	L+H	95		Wilson	Storms	1145 p	—	—	X				Tied up
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

✓ - 7
P - 1
W - 0

7

467-

Form 1973-D.

12 B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 152

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 17th 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull Out										
11P	7a	3468	Holmes	Parson		1.15a	3223 / 349a	450a	3411 / 439a			✓	
7a	3P	3418	Sechrist	Pinsavy									
3P	11P	3419	Doolittle	Bricent		11.10P	3418 / 10.50P					✓	Legemate Hanford on Jacklyn 349
			First Bound Humps										
12a	7a	3222	Hickman	Davis						2.50a ✓			
7a	3P	3222 ✓	Manning	Robbins	6.22							✓	
6P	12m	3222 ✓	Hickman	Davis									
			West Bound Pull up										
11P	7a	3434	D Foley	Krumm		3a	3411 / 3.7					✓	engine trip
7a	3P	3411	Mazur	Foley				12.43P	3223 / 12.40			✓	
3P	11P	3386	Mulligan	Shepard									
			West Bound Humps										
5.30a	1.30P	3223 ✓	Squires	Foglino	5.42a					1.30P ✓		✓	
4P	12m	3223 ✓	Sherman	Stewart	4P					12.20a		✓	
			Mtce Div -										
7a	3P	3419 ✓	Kelly	White	7a					3.45P ✓		✓	Changed to 3P 3478
			Eq Div -										
12a	6.40a	3419	Manning	Anderson		12.30a	3411 / 12.50a	3a	3434 / 3a	6.40a		✓	Changed to
Pa	4P	3434 ✓	C Ripley	Bacon	8a				X	4P ✓		✓	8 - 4
11P	12m	3434 ✓	Barnes	Hampton	11P							✓	M - 4
													M - 3

MID-NIGHT ENGINE SITUATION

A 3206 - 3220 - 3221 - 3249 - 3340

B 2352 - 3114 - 3200 - 3202 - 3224 - 3411

C 554 - 3234 - 3237 - 3240 - 3244 - 3248

D 3208 - 3214 - 3222 - 3223 - 3418 - 3419 - 3434

Stored

(10)

Form 1018-C

1313

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 133

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 17 1921

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Lon	95		Decker	Wilson	1250	—	—	X				Fuel up
2	Lwe	56	✓	Jones	Piper	—	2 25a	2 25a	X	7			
3	601	3219		Dooley	Quinn	2 35a	—	—	✓				Fuel up
4	Prov 5	3241	2 45a ✓	Tealer	Ray	—	5a	5a	X	7			
5	Local	391	✓	Simon	Lambert	—	5 30a	5 30a	X	7			
6	Mon.	554	✓	Thompson	Morris	—	5 30a	5 30a	X	W			
7	No 3	3322	✓	Sherlow	Stewart	5 10a	—	—	✓				Fuel up
8	Lwe	201	✓	Carpenter		6 15a		6 20a	X	7			Turn
9	1132	3342	✓	Simpson	Harris	—	8 30a	8 40a	X	7			
10	1136	3207	✓	Bray	Moore	—	9a	9a	X	7			
11	Erie	3160	✓	Reeves		6 40a		6 50a	X	7			Turned over to
12	No 5	3215	✓	Calhoun	Sidney	5 25a	—	—	✓				Fuel up
13	Lwe	463	✓	Owens	—	7 20a	—	7 25a	X	7			Turn + Water
14	951	1596	✓	Perrin	Smith	7 15a	—	—	✓				Fuel up
15	Bos	95	✓	Dukes	Wilson		10 25a	10 45a	X	7			
16	1131	3241	✓	Forbes	Lawrence		10 25a	10 35a	X	7			
17	Bol	3347		Flynn	Yackley	6 40a	—	—	✓				Fuel up
18	L K Y	77		O'Brien	Emmons	9 05a	—	—	X				" "
19	1132	3209	✓	Dickey	Casano		12 45p	12 50p	X	7			
20	Lwe	454	✓	Fiske	—	10 05a	—	10 25a	X	7			Turn + Water
21	Prov E	305	✓	Bleyhan	—	11 35a	—	11 50a		7			Turn
22	Am 6	3243	✓	Sheehan	Hinckley		2p	2p		7			
23	Prov 1	3377	✓	Helmes	Goldsmith		2 45p	2 40p		7			
24	Prov 4	3279	✓	English	Denton		3 10p	3 10p		7			Light south Caboose
25	956	1596	✓	Perrin	Smith		3 35p	3 35p		P			
26	Bar	3219	✓	Dooley	Pizzaro		4 35p	4 35p		7			
27	Prov 3	3371		Donovan	Chevalier	1P	—	—	✓ 4-19				Turn up
28	Prov 11	3306		Gray	Clymer	10p	—	—	✓				" "
29	Obw	315	✓	Dickey	[illegible]	1 35p	—	1 45p		7			Turn + water
30	C+K	91	✓	Whitaker	—	2 25p	—	2 30p		7			"
31	Lon	77	✓	O'Brien	Emmons	—	6 45p	6 45p		7			
32	Bos	3348		Gordon	Carkeek	4P	—	—	✓				Fuel up
33	Mus	3374		Thompson	Morris	4 35p	—	—	8-49				" "
34	Obw	3247	✓	Sylvia	Vanburen	—	8 30p	8 30p	✓	7			
35	Obw	3215	✓	Colburn	Delaney	—	9P	9P		7			
36	Bos	3244		Kane	Foley	7 35p	—	—	✓ 8-18				Fuel up
37	Bol	3234		Patton	Brodley	7 25p	—	—	✓				" "
38	MN X	3148		Warren	Nolan	8P	—	—	✓				" "
39	Prov X	3237		Knox	Kirkpatrick	8 15p	—	—	8-19				" "
40	Lwe	206	✓	Lott		9 25p		9 30p		7			Turn + Water + Coal
41	Prov E	58		Keiper	Lott	8 50p	—	—	✓				Fuel up
42	Erie	3199	✓	Vandebeck	—	10 15p	0	10 35p	✓	7			Turn + Water + Coal
43													
44													
45													J — 24
46													P — 1
47													W — 1
48													
49													
50													
51													
52													
53													
54													
55													

(26)

467-12

Form 1870-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-16- 1928

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep't	Arrived	Dep't	Arrived	Dep't	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound (Pull out)										
11P	7a	3418	Holmes	Parsons									
7a	3P	3418	Seebeck	Pomeroy								1	
3P	11P	3434	Doolittle	F Russell		11P	3418 10:45P						
			East Bound (Humps)										
12a	2a	3222	Thurman	Hayes						2:15a			
7a	3P	3222	Stage	Robinson	6:45a							1	
6P	12m	3224	Kilkman	Davis									
			West Bound Pull up										
11P	7a	3214	Foley	Krumm		1:40a	3411 1:45P					1	
7a	3P	3411	Niland	Jeffers									
3P	11P	3411	Mulligan	Shepard		11:10P	3434 11P					1	
			West Bound Humps										
5:30a	1:30P	3223	Smith	Thompson	5:30a							1	
4P	12m	3223	Abraham	Dreher						12:30a	1.17		
			Misc. Duty										
7a	3P	3434	Kelly	White	7a					12:45P		1	Depart to 3P/3418
			Ex Duty										
8a		3214	Ripley	Bacon	8a					4P		1	
			Ex Duntaking										E-1
													W-3
10:40P	6:40a	3419	Herring	Anderson	10:40P							1	M-3/8

MID-NIGHT ENGINE SITUATION

A 554- 3209- 3243- 3249-

B 2352- 3104- 3200- 3202- 3224- 3240

C 391- 3207- 3214- 3220- 3229- 3241- 3342- 3208-

D 3222- 3223- 3411- 3418- 3419- 3434

Stored

(8)

467-13

Form 1212-C

15-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 153

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any service except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/16 19 9

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'T'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Port 8	3221	11 45 P		Donovan	Chandler	-	1 30 a	1 30 a	X	7			
2	Lowe	58		✓	Howe	Lobb	-	2 a	2 a	X	7			
3	L & N	90			Jensen	Incoming	12 45 P	-	-	X				Tied up
4	Mon	554	3 a	✓	Murray	Anderson	-	5 30 a	5 30 a	X	W			
5	No 5	3216			Gilfeather	Hamelin	3 40 a	-	-	✓				Tied up
6	Port 11	3206	3 50 a	✓	Gray	Clemens	-	6 a	6 a	X	7			
7	153	3345		✓	Worden	O'Keefe	-	8 30 a	8 45 a	X	7			
8	0736	3370		✓	Fitch	Dow	-	9 a	9 a	X	7			
9	Low	48		✓	Jamieson	—	6 45 a		6 45 a	X	7			Turn
10	Low	307		✓	Bryan	—	6 55 a		7 a	X	7			"
11	951	1596			Pierson	Smith	7 45 a	—	—	✓				Tied up
12	Dow	457		✓	Halstead	—	7 25 a	—	7 25 a	X	7			Turn + Water
13	Cill	3179		✓	Krank	—	7 25 a	—	7 45 a	X	7			
14	0.1	3345			Martin	Miller	7 35 a	—	—	✓				Tied up
15	801	3345			Detrick	Seeley	7 45 a	—	—	✓				" "
16	No 3	3316			Brakel	Rose	9 15	—	—	✓				" "
17	Canton	3349			Burwell	Finnegan	9 45 a	—	—	✓				" "
18	Dark	90		✓	Jensen	[illegible]		10 20 a	10 30 a	X	7			
19	1931	3348		✓	Mann	Murdock		10 20 a	10 20 a	X	7			
20	Special	1305		✓	Daley	Trowell	11 05 a	-	11 15 a		7			Turn + Water
21	Conn	2		✓	Farquhar	—	11 20 a	-	11 25 a	X	7			Turn
22	Dow	407		✓	Decker	—	11 22 a	-	11 25 a	X	7			" + Water
23	Tol 5	3348			Foster	Bair	11 40 a	-	-	✓				Tied up
24	Mor	3334		✓	Pelton	Brady		12 30 p	12 30 p	X	7			
25	CMQ	895			Campbell	Kanter	10	-	-	✓				Tied up
26	958	1596			Pierson	Smith		3 35 p	3 35 p	X	P			
27	Dow	3345		✓	Martin	Miller		4 p	4 30 p	X	7			
28	Short	3334		✓	—	Fisch		4 p	4 30 p	X	7			
29	Ono	3314		✓	Drunk	Hoverton		5 25 p	5 30 p	X	7			
30	Mich	554			Myers	Anderson	7 40 p	-	-	8-17				Tied up
31	Bol 1	3343			C. Hollins	Ford Arnold	7 50 p	-	-	✓				" "
32	Dow	317		✓	Decker	-	3 20 p		3 35 p	X	7			Turn + Water
33	Erie	3160		✓	Reid	-	4 20 p		4 35 p	X	7			" "
34	Bol 2	3337	4 30 p	✓	Krug	Pitkney	-	6 30 p	6 30 p	X	7			Light with Caboose
35	801	3309			Bell	Cross	4 55 p	-	-	1	17	9		Tied up
36	Bo 7	3347			Simpson	Hanks	5 20 p	-	-	✓				" "
37	Low	56			N Jones	Piper	5 55 p	-	-	X				" "
38	Local	391			Elson	Lawtrack	5 45 p	-	-	8-17				" "
39	Dow	3345		✓	Detrick	Seeley	-	8 30 p	8 30 p	X	7			
40	Dow	3316		✓	S. Brown	Hildebrand	-	9 p	9 p	X	7			
41	CMQ	895		✓	Campbell	Kanter	-	9 20 p	9 20 p	X	7			
42	Bo 5	3307			Decker	Moore	6 50 p	-	-	8-17				Tied up
43	N.Y.	3349			Fisher	Lamont	7 10 p	-	-	8-17	41	50 p		" "
44	Erie	3187		✓	Carl Adrick		7 10 p		7 15 p	X	7			Turn + Water
45	Low	306		✓	Gidbrison		8 40 p		8 50 p	X	7			" "
46	Bol 4	3341			English	Donlon	10 p	-	-	8-17				Tied up
47	Bol 6	3349			Hickey	Reisinger	10 20 p	-	-	8-17	8-11			" "
48														
49														
50														
51														
52														
53														
54														

7 — 46
P — 1
W — 1
78

467-14

Plaintiff's Ex. 152

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/5 — 1928

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep't	Arrived	Dep't	Arrived	Dep't	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullman									
11P	7a	3418	Holmes	Parsons	-	-	-	-	-	-			
7a	3P	3416	Bechtel	Sweeney	-	-	-	-	-	2:22	11:22	→	Changed to
3P	11P	3434	Brown	Priest	-	11:45	3416 / 1030	-	-	-	8-1/2	1	3434
			East Bound	Nemoff									
7a	2a	3222	Heckman	Glynn	-	-	-	-	-	3:00A			
7a	3	3222	Quinn	Robertson	6:35a	-	-	-	-	-		1	
6P	12	3222	Heckman	Dann	-	-	-	-	-	-			
			West Bound	Pullen									
11P	7a	3432	Foley	Keegan	-	12:50A	3411 / 1230	-	-	-		1	
7a	3P	3411	Brewer	Jeffers	-	-	-	-	-	-			
3P	11P	3412	Mulligan	Shepard	-	11:45	3416 / 1030	-	-	-	11/16	1	
			West Bound	Hunn									
3P	11P	3423	Smith	Thompson	3:00	-	-	-	-	12:00		1	
11P	7a	3423	Sheehan	Clover	11P		-	-	-	12:00	11/16	1	
			Main Dr										
7a	3P	3434	Kelly	White	2:00	-	-	-	-	3:15		→	Changed to 3418
			64 Yd										
11P	7a	3419	Slagle	Stackhouse	11P	-	-	-	-	7:00		1	
3P		3419	Ripley	Brown	8P					8P.4		1	

MID-NIGHT ENGINE SITUATION

A 554. 3221.

B 3222 3423 3418 3222 3434 3240 3419

C 3206 3411 3237 3418 3345 3550 3434

D 3411 3222 3423 3411 3416 3434

Ar Shop 3434

Stored 3416

(8)

467-15

Form 1210-C

1713

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiff's Ex. 153

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/15 19 9

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 5	3229	12 20 ±	Teator	Ray	–	2 30 a	2 30 a	X	✓			
2	Lyn 2	56		Carpenter	Piper	–	2 55 ±	2 55 a	X	✓			
3	Lyn 1	77		Sturis	Wilson	12 30 ±	–	–	X				Tied up -
4	Pool 1	3205	1 50 ±	Coleman	Goldsmith	–	4 a	4 a	X	✓			
5	Pool 4	3220		Hoick	Anderson	2 30 ±	–	–	✓				Tied up -
6	Local	391		Green	Lawton	–	4 30 a	4 30 a	X	✓			
7	Mon	554		Morning	Morris	–	5 30 a	5 30 a	X	✓			
8	No 2	3221		Shedd	Grimley	4 a	–	–	✓				Tied up
9	No 5	3215		Alger	Geyling	4 30 ±	–	–	✓				
10	Ass 1	3218		Brown	Ellis	4 45	–	–	✓				" "
11	Ass 2	3348		Simpson	Nolet	–	8 30 a	8 45 a	X	✓			" "
12	Ops 6	3244		Kane	Foley	÷	9 a	9 a	X	✓			
13	Lyn 2	305		Libby	–	6 ±	–	6 05 ±	X	✓			
14	95	1596		H Barber	Punch	7 ÷	–	–	✓				Turned -
15	Erie	3199		Krauch		7 55 a	–	7 50 a	X	✓			Quit up
16	Bu	3747		Glynn	Vorbrych	7 45 a	–	–	✓				Turn + Water
17	Lyn	77		Sturis	Wilson	–	10 30 a	10 30 a	X	✓			Turn up
18	Ops 4	3241		Fraher	Laurence	–	10 30 a	10 30 a	X	✓			
19	Ops 2	3209		Bell	Corno	–	12 30 p	12 30 p	X	✓			
20	Lyn	460		Fayrie		8 a	–	8 10 a	X	✓			Turn + Water
21	Erie	3173		J Daley		8 20 a	–	8 20 a	X	✓			Coal + Water
22	Lyn	451		Hoffman		8 40 a	–	8 50 a	X	✓			Turn + Water
23	Lyn	73		Purcell	Trimmer	10 11 a	–	–	X				Quit up
24	Pw	315		Decker	–	9 15 a	–	11 35 a	X	✓			Turn Water
25	Ops 6	3243		Sheehan	Stewart	–	2 P	2 P	X	✓			
26	Pool 3	3243		Donovan	Chandler	12 45	–	–	✓				Tied up
27	95	1596		Barber	Smith	–	3 30 p	3 30 p	X	✓			
28	Pool 4	3243	1 15	English	Donlon	–	4 P	4 P	X	✓			
29	Ops 1	3219		Brown	Ellis	–	4 30 p	4 30 p	X	✓			
30		3218		–	Strickney	–	4 30 p	4 30 p	X	✓			
31	Pool 6	3220	2 15	Wisley	Reisinger	–	5 30 p	6 30 p	X	✓			Turned to Ops 4
32	Mon	554		Morning	Morris	2 55 p	–	–	✓				Quit up
33	Erie	3192		Stedd	–	3 30 p	–	3 45 p	X	✓			Turn Engine
34	Pw	315		Decker	–	4 45 p	–	4 45 p	X	✓			
35	Lyn	73		Purcell	Trimmer	–	4 30 p	4 30 p	X	✓			
36	Erie	58		Ford	Lobb	5 30 p	–	–	X				Tied up
37	Bay	3245		Wooden	Hicks	5 P	–	–	✓	8-16			
38	Ops 4	3247	6 30 p	Glynn	Vorberg	–	9 30 p	8 30 p	X	✓			
39	Ops 2	3215		Alger	Gudrey	–	9 P	9 P	X	✓			
40	Lyn	3179		Pinkerton	–	7 P	–	7 45 p	X	✓			Turn Private
41	Erie	306		Bryson	–	7 45 p	–	8 45 p	X	✓			" "
42	Erie	301		Bryson	–	8 55 p	–	9 05 p	X	✓			" "
43	Ops 11	3206		Shay	Clements	9 30 p	–	–	✓	8/16			Tied up
44	E 01	3248		Wynn	Hildreth	10 P	–	–	8-16				" " 2-W
45	Bu 5	3550		Felch	Dow	10 44 P	–	–	8-16				" " P-1
46	Pool 2	3237		Kane	Leary	11 05 P	–	–	8-16				" " W-1
47	Eo 1	3234		Bellow	Beasy	11 45 P	–	–	8-16				" "
48													
49													
50													
51													
52													
53													

29

467-1

Form 1972-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 152

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DAY 9-14- 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pullout										
11P	7a	3418	Holmes	Brown	-	-	-	-	-	-			
7a	3P	3418	Lichrist	Sweeney	-	-	-	-	-	[illegible]			→ Engine in Yard for 3434
3P	11P	3434	Doolittle	J. Ryan	-	11[illegible]	[illegible]	-	-	-		1	
			East Bound Dump										
12a	7a	3222	Hageman	Davis	-	-	-	-	-	2[illegible]			
7a	3P	3222 ✓	Burnell	Robertson	6[illegible]	-	-	-	-	-		1	
6P	1A	3224	Hartman	Davis	-	-	-	-	-	-			
			Light Bound Pull up										
11P	7a	3214	Foley	Brown	-	2[illegible]	[illegible]	-	-	-		1	
7a	3P	3411	Misner	Jeffers	-	-	-	-	-	-			
3P	11P	3411	Milligan	Bryant	-	11[illegible]	[illegible]	-	-	-	3/15	1	
			West Bound Dump										
5[illegible]	1[illegible]	3223	Smith	Thompson	5[illegible]	-	-	-	-	[illegible]	3/15	1	
4P	1A	3223 ✓	Meehan	Dunker	4P	-	-	-	-	[illegible]		1	
			Mine Switch										
7a	3P	0434 ✓	Kelly	White	7a	-	-	-	-	[illegible]		1	→ Engine in Yard for 3418
			Ex. Serv.										
8a	7[illegible]	3214 ✓	Ripley	Bacon	8a	-	-	-	-	-		1	E - 2 W - 4 MI - 2 8
			Replaces										
2[illegible]	4P	3214	Ripley	Bacon	-	-	-	-	-	4[illegible]			

MID-NIGHT ENGINE SITUATION

A 321-554-3208-3229-3248

B 3202-3204-3206-3207-3211-3224-3239-3240-3419

C 3209-3219-3241-3244-3243.

D 3214-3222-3411-3418-3[illegible] 3223.

In Shop 3232

Shops None

467-17

Form 1472-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153-

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/14 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 3	3243	1115a	✓	Donavan	Chandler	–	230a	230a	X	7			
2	LyN	90			Jensen	Zuccarelli	1255p	–	–	X				Fired up
3	Pool 11	3206	245p	✓	Gray	Hawks	–	5a	5a	X	7			
4	MNK	554		✓	G Burns	Steinway	–	530a	530a	X	W			
5	A01	3225			Dooley	Pierce	250a	–	–	✓				Fired up
6	N03	3314			Brobst	Ross	410a	–	–	✓				" "
7	N05	3234			Devine	Fitzsimmons	345a	–	–	✓				" "
8	Pool 2	3237			Knox	Howlett	5a	–	–	✓				" "
9	OB2	3319		✓	Woodin	Ackley	–	830a	830a	X	7			
10	OB6	3226		✓	Buck	Moore	–	9a	9a	X	7			
11	Erie	3178		✓	Krupp		–	530a	540a	X	7			Fuse + Water
12	950	1596			Barber	Quirk	7a	–	–	✓				Fired up
13	Box	3245			Corbett	Bailey	6 15a	–	–	✓				" "
14	OSW	415		✓	Jackson	–	215a	–	715a	X	7			Fuse + Water
15	LyN	90		✓	Devaux	Zuccarelli	–	1025a	1025a	X	7			
16	OB4	3248		✓	Mercer	Lenthen	–	1025a	1035a	✓	7			
17	OBx	3234		✓	Pelton	Purdy	–	1230p	1236p	X	7			
18	OSW	415		✓	Owens	–	825a	–	835a	X	7			Fuse + Water
19	LyNE	305		✓	Beidleman	–	835a	–	845a	X	7			" "
20	OB3	3319		X	Woodin	Ackerly	845a	–	905a	X	7	10		Relieved from yd for Bpt & Nyk
21	Pool 5	3237			Frater	Perry	9a	–	–		8			Fired up
22	OW	403		✓	Decker		1140a	–	1150a	X	7			Fuse + Water
23	MNE	306		✓	Bunzard	–	1205p	–	1215p	X	7			" "
24	OW6	3237		✓	Corbett	Ross	–	2p	2p	X	7			
25	OW9	900			Campbell	Kontes	1115a	–	–	✓				Fired up
26	Pool 4	3314	1p	✓	Kidd	Pyscell	–	3p	30	X	7			
27	950	1596	0	✓	Barber	Quirk	–	330p	205p	X	8			
28	OBx	3225		✓	Dooley	Pierce	–	430p	430p	X	7			
29	MNK	554			G Burns	Steinway	2p	–	–	8/15				Fired up
30	Ad1	3208			Gilmore	Goldsmith	345p	–	–	✓	8/15			"
31	BO7	3348		✓	Sampson	Welch	2 45p	–	–	✓	8/15			" "
32	Erie	3189		✓	Shield	–	4 05p	–	430p	X	7			Fuse + Water
33	601	3209			Price	Cross	415p	–	–	✓				Fire up
34	OWU	403		X	Decker	–	425p	–	505p	X	7			Fuse + Water
35	Lyell	391			Jensen	Lovelace	430p	–	–	8/15				Fire up
36	LyE	56			Carpenter	Piper	620p	–	–	X				" "
37	BO5	3244			Kane	Foley	625p	–	–	8/15				" "
38	BOJ	900		✓	Campbell	Kessler	–	730p	735p	X	7			
39	OW7	3246	7p	✓	Fetrick	Quirk	–	830p	840p	X	7			
40	OW2	3216	7p	✓	Fitzgerald	Gildersleeve	–	9p	9p	X	7			
41	Ex	3241			Parker	Donovan	645p	–	–	8/15				Fired up
42	Erie	3178		X	Castleberry	–	723p	–	730p	X	7			Fuse + Water
43	Pool 4	3219		✓	Fitzpatrick	Newell	820p	–	–	8/15				Fire up
44	LyE	301		✓	Mullen	–	915p	–	920p	X	7			Fuse + Water
45														J-24 P-1 W-1
46														
47														
48														
49														
50														
51														
52														
53														
54														

(23)

Form 1970-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-13 1927

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	TIME Arrived	TIME Dep'd	TIME Arrived	TIME Dep'd	TIME Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull Out										
11P	7a	3418	Nelson	Brown	-	-	-	-	-	Engine note	-		Change to engine 3434
7a	3P	3418	Secrist	Sweeney	-	-	-	-					
3P	11P	3434	Drolette	F Ruane		11 10	3418 1020	-	-	-	8/14	1	
			East Bound Hump										
10a	2a	3222	Hickman	Davis	-	-	-	-	-	2 20			
2P	3P	3222	Burrell	Robertson	6 55	-	-	-	-	-		1	
6P	1Y	3x1Y	McKman	Dann		-	-	-	-	-			
			West Bound Pull Out										
11P	7a	3434	Fahey	Kimm	-	140	3411 1120	-	-	-		1	
7a	3P	3411	Mann	Jeffers	-	-	-	-	-	-			
3P	11P	3411	Michigan	Pickford	-	11 18	3418 1030P	-	-	-	8/14	1	
			West Bound Hump										
1230	1310	3223	Smith	Brown	5	-	-	-	-	1 20		1	
4P	1Y	3x13	Rhodes	Decker	40	-	-	-	-	1 20a	8/14	1	
			Miss Aw										
7a	3P	3434	Kelly	White	70	-	-	-	-	3418 3P		1	Change to engine 3418

6 - Y
4 - 4
M - 1
7

(1)

MID-NIGHT ENGINE SITUATION

A 3319-

B 2352- 3104 - 3200 - 3202 - 3211 - 3216 - 3224 - 3229 - 3240 - 3419

C 3206 - 3226 - 3243 - 3248 - 3343 - 554 -

D 3214 - 3222 - 3411 - 3418 - 3434 - 3223

Stored

467-19

Form 1910-A

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Plaintiffs Ex. 153-B

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/13 192 9

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'T'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	LONE	56		✓	Hayberg	Pepper	—	10 2a	12 a	X	7			
2	Prov 4	3208	12 15a	✓	Barnes	Donlon	—	2 30a	2 30a	X	7			
3	LoN	72			Styles	Wilson	12 W	—	—	X				Fire up
4	Prov 6	3234	1 55a		Heath	Anderson	—	4a	4a	X	7			
5	Local	391		✓	Sisson	Lambert	—	4 30a	4 30a	X	7			
6	Bo 1	3219			Martin	Miller	3a	—	—	✓				Fire up —
7	Wmn	554	3	✓	Thompson	Apsley	—	5 30a	5 30a	X	W			
8	NO 5	3215			Alger	Sidney	4a	—	—	✓				Fire up —
9	NO 3	3319			Burr	Grasslin	4 20a	—	—	✓ 8/14				" "
10	OB 2	3345		✓	Simpson	Abell	—	8 30a	8 30a	X	7			
11	OB 6	3550		✓	W Barber	Mosta	—	9a	9a	X	7			
12	Prov 2	307		✓	Beidelman	—	7a	—	7 a	X	7			Turn + Water
13	Bo 7	3247			Styles	Hasbrouck	6 45a	—	—	✓				Fire up
14	95 1	1596			Pearson	Linsell	7a	—	—	✓				" "
15	Dot	418		✓	Jackson	—	7 15a	—	7 35a	X	7			Turn + Water
16	Expr	3191		✓	Krouse	—	7 15a	—	8 07a	X	7			" "
17	LoN	72		✓	Styles	Wilson	—	10 15a	10 35a	X	7			
18	OB 4	3241		✓	Fisher	Laumeier	—	10 30a	10 30a	X	7			
19	LoN	73			Purcell	Crummey	8 30a	—	—	X				Fire up
20	Bost	314		✓	Decker	—	9a	—	9 20a	X	7			Turn + Water
21	Dot	460		✓	McTurgan	—	10 30a	—	10 40a	X	7			" "
22	OS 1	3209		✓	Gillo	Crowe	—	12 30p	12 30p	X	7			
23	LNE	305		✓	Bryson	—	11 25a	—	11 35a	X	7			Turn + Water
24	OB 6	3219		✓	Upham	Quinby	—	2p	2p	X	7			
25	Dot	314		X	Decker	—	1p	—	1 20p	X	7			Turn + Water
26	95 P	1596		✓	Pearson	Linsell	—	3 25p	3 30p	X	7			
27	Old 1	3218		✓	Harlan	Miller	—	4 50p	4 30p	X	7			
28	Pool 3	3243			Donovan	Chandler	1 25p	—	—	✓ 8/14		1		Fire up.
29	Wmn	554			Thompson	Apsley	2 45p	—	—	7/14				" "
30	LoN	93		✓	Rice	—	2 45p	—	2 45p	X	7			Turn +
31	NO 7	3343			Woodin	Stewart	3 25p	—	—	X				Fire up
32	LoN	73		✓	Purcell	Crummey	—	6 30p	5 20p	X	7			
33	NO 5	3216			Burr	Moore	3 40p	—	—	✓ 8/14				Fire up
34	Ex 1	3249			Gillen	Brady	4p	—	—	✓ 8/15				
35	Dot	38			Horn	Lobb	4 20p	—	—	X				" "
36	Expr	3178		X	Shield	—	5 30p	—	5 40p	X	7			Turn + water
37	OB 4	3247		✓	Glynn	Hasberg	—	8 30a	8 30a	X	7			
38	NO 2	3215		✓	Alger	Sidney	—	9p	9p	X	7			
39	Expr	3191		X	Richmond	—	7 00p	—	7 10p	X	7			Turn + water
40	Ex	3241			Krouse	Hasbrouck	8 10p	—	—					Fire up
41	Pool 11	3206			Grigg	Shields	8 30p	—	—	✓				" "
42	Dot	303		✓	Cobb	—	9p	—	9p	X	7			Turn + water —
43		307		X	Jones		11 30p		11 30p	X	7			Turn
														7 - 76
														P - 1
														W - 1

W

467-20

Plaintiffs Ex. 153-

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** 8-12 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep't	Arrived	Dep't	Arrived	Dep't	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Yard	Pullard									
11P	7a	3418	Holmes	Hackett	-	-	-	-	-	-			
7a	3P	3418	Bishop	Timony	-	-	-	-	-	Rel Extra		→	Changed to
3P	11P	3419	Doolittle	J Rivett	—	10P	3418 10P	-	-	-	8/13	1	Yard pm 3419
			East Bound Yard	Murphy									
12A	7a	3222	Hackman	Lane	-	-	-	-	-	3 Extra			
7a	3P	3222	Bennett	Johnson	6 Extra	-	-	-	-	-		1	
4P	12	3222	Hackman	Lane	-	-	-	-	-	-			
			West Bound Yard	Pollup									
11P	7a	3434	Foley	Knapp	-	140P	3411 11P	-	-	-		1	
7a	3P	3411	Minor	Jeffers	-	-	-	-	-	-			
3P	11P	3411	Mullaney	Risinger	-	11P	3434 10P	-	-	-	8/13	1	
			West Bound Yard	Thomas									
4P	12	3223	Richard	Decker	-	-	-	-	-	12 Extra	8/13		
			Mine Run										
7a	3P	3419	Kelly	White	Tw	-	-	-	-	3 Extra 3P		1	Changed to Yard pm 3418
			Ly Ave										
8a	3 10P	3434	Pipley	Bacon	8a	-	-	-	-	-			B - 2
10P	12		Rupknock										W - 3
3P	10P	3434	Bixley	Dacon	-	-	-	-	-	4 Extra			M - 2
													6
													(6)

MID-NIGHT ENGINE SITUATION

A 3554 - 3208 - 3234 - 3550 - 3241

B 3352 3404 - 3200 - 3202 - 3211 - 3214 - 3216 3224 - 3229

C 391 - 3209 - 3218 - 3345

D 3222 - 3223 - 3411 - 3418 - 3419 - 3434

Stored None

467-21

234

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY. - Plaintiff's Ex. 153

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 5/IX 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'T'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Port 5	3237	1140P	✓	Jeakins	Houston	—	5 30 ±	2 30 ±	X	7			
2	LvH	90		✓	Jensen	Quarantino	12 45a	—	—	X				Laid up -
3	Port 1	3232	130 ±	✓	Coffman	Tolleman	-	4 ±	4 ±	X	7			
4	Port 2	58		✓	Howe	Lott	—	4 30 ±	4 30 a	X	7			
5	Port 4	3214			Barnes	Denton	2 25 P	—	—	8	13 15/16			Laid up
6	Bell	3225			Brown	Mendoza	3 10 ±	—	—	✓				" "
7	Wom	554		✓	Heald	Thompson	—	5 30 -	5 30 a	X	W			
8	Qu	3216			Yarbrough	Harris	4 50 ±	—	—	1	14			Laid up -
9	No 3	3314			Probst	Rosso	5 40 ±	—	—	✓				" "
10	NBr	3348		✓	Mordan	Stewart	—	8 20 a	8 50 a	X	7			
11	0136	3244		✓	Kane	Foley	—	9 a	9 a	X	7			
12	Q51	1596			Pearson	Smith	9 a	—	—					Drill up
13	Erie	3199		✓	Krouse	—	7 20 a		7 50 a	X	7			Dump + Water
14	Qm	304		✓	Decker	-	9 15 a		9 45 a	X	7			" "
15	LvH	90		✓	Jensen	Druckenbrod	-	10 20 a	10 25 a	X	7			
16	0134	3248		✓	Wilson	Fung a	-	10 30 a	10 30 a	X	7			
17	0136	3240		✓	Fallin	Brady	-	12 34 p	12 30 p	X	✓			
18	Qm	906			Campbell	Kanter	10 a	-	-	✓				Drill up
19	Qm	415		✓	DeVane	-	10 15 a		10 45 a	X	7			Dump + Water
20	Qm	419		✓	Hoffman	-	10 40 a		10 45 a	X	7			" "
21	Port 6	3234			Simms	Anderson	10 29 a	-	-	✓	9 13 7			Drill up Water
22	Erie	3199		X	Dunk	-	11 15 a		11 25 a	X	7			
23	No 6	3314		✓	Probst	Rosso		3 00 p	3 30	X	7			
24	Q50	1596		✓	Pearson	Smith	-	3 35 p	3 35 p	X	8			
25	Qm	3225		✓	Brown	Mendoza	-	4 20 p	4 20 p	X	7			
26	Qm	304		X	Decker		2 20 p	-	2 37 p	X	7			Dump + Water
27	Mk	554			Heald	Thompson	2 40 p	-	-	1	13			Drill up
28	Erie	3147		✓	Stidd	-	2 50 p	-	3 p	✓	7			Dump + Water
29	LvH	94		✓	Ribich	-	3 p	-	3 10 p	X	7			Turned
30	Port	56	..		Harding	Piper	3 20 p	-	-	X				Lie up
31	E11	3209			Delfo	Healy	3 25 p	-	-	✓				" "
32	305	305-06			Parker	Nacli	3 30 p	-	-	✓				" "
33	Qm 7	3343			Simpson	Abell	3 40 p	-	-	✓	1 13			" "
34	Q114	3240	60	✓	Defricks	Healy	-	7 30 p	8 30 p	X	7			
35	Q102	3221		✓	Simms	Gildersleeve	-	9 p	9 p	X	7			
36	Qm	906		✓	Campbell	Kanter	-	6 30 p	6 30 p	-	7			
37	K13	502		✓	Lobb	-	7 15 p	-	7 25 p	X	7			Turn + Lube
38	Local	096			Sisson	Lombardi	7 25 p	-	-	8 13				Turn up
39	E1	3288			Fisher	Lawrence	7 40 p	-	-	✓				" "
40	E11	3212		✓	Fieldstone	-	10 P	-	10 10 p	X	7			Turn + Coal
41														
42														1 - 43
43														P - 1
44														W - 1
45														
46														
47														
48														
49														
50														
51														
52														
53														
54														
55														
56														

93

467-22

Plaintiffs Ex. 152

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-11-1949

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pull Out									
11P	7a	3418	Holmes	Blickney	-	-	-	-	-	2400 Note			Changed on Yard fr 3419
7a	3P	3418	Seghini	Pomeroy	-	-	-	-	-	-		1	
3P	11P	3419	Overliddle	Blickney	-	11[illegible]	3418 1300 P	-	-	-			
			East Bound	Shrimp									
12a	2a	3222	Nicholson	Dane	-	-	-	-	-	2 30 a			
7a	3P	3222	Burnell	Robertson	6 45 a	-	-	-	-	-		1	
6P	12	3222	Hutchman	Dane	-		-	-	-	-			
			East Bound	Pull up									
11P	7a	3419	Foley	Stewart	-	1 45 a	3411 11 P	-	-	8 11 K		1	
7a	3P	3411	Mason	Jeffries	-	-	2	-	-	-			
3P	11P	3411	Mulligan	Barnard	-	11 [illegible]	3434 1030 P	-	-	8 11 K		1	
			West Bound	Hump									
5 30 a	1 30 P	3223	Smith	Thompson	5 a	-	-	-	-	1 30 P		1	
4P	12	3223	Sheehan	Dexter	4P	-	-	-	-	12 00 a 8 11 K		1	
			Miscellaneous										
7a	3P	3419	Kelly	White	7a	-	-	-	-	3418 3P		1	Changed on Yard fr 3418
			Engine Service										
8a	4P	3434	Heald	Bacon	8a	-	-	-	-	4P		1	

E - 2
H - 4
M - 7

8

MID-NIGHT ENGINE SITUATION

A 550 - 3221 - 3232 - 3245 - 3237

B 2357 - 3104 - 3200 - 3202 - 3211 - 3224 - 3229

C 3208 - 3240 - 3241 - 3244 - 3248 - 3249

D 3222 - 3223 - 3411 - 3418 - 3419 - 3434.

Stored None

467-23

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY. Plaintiff's Ex. 193

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any service except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/11 1939

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED OVER CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	LvN	91		Stern	Nelson	11 35 a	-	-	✓				Tied up.
2	Rd 6	3284	2 30 a ✓	Donovan	Chandler	5 a	5 a	5 a	X	7			
3	Qa 1	3219		Dooley	Pierce	4 35 a	-	-	✓				Tied up.
4	Pon 5	3233		Ingalis	Roy	5 40 a	-	-	✓	8/12 ✓			" "
5	Rm 2	58	4 a ✓	Bickford	Pepin	-	6 a	6 a	X	7			
6	Ob 2	3343	✓	Daily	Abell	-	8 30 a	8 30 a	X	7			
7	Ob 6	3350	✓	D'Agostino	Moore	-	9 a	9 a	X	7			
8	Lvw	806	✓	Beckman		6 50 a		7 30 a	X	7			
9	No 5	3271		O'Fitzgerald	Wiedenbeck	6 10 a	-	-	✓				Died up.
10	95 1	1596		Pickford	Smith	7 a	-	-	✓	8/11 ✓			" "
11	Qw	458	✓	Fife	-	8 a		8 05 a	X	7			Dump Water
12	Erie	3175	✓	K Jones	-	8 15 a		8 30 a	X	7			
13	No 3	3315		Sheehan	Gonsales	8 20 a	-	-	✓				Died up
14	LvN	91	✓	Stern	Nelson	-	10 20 a	10 30 a	X	7			
15	Ob 4	3236	✓	Zgabay	Lammon	-	10 30 a	10 30 a	X	7			
16	Ob 2	3349	✓	Pelton	Arkesky	-	12 30 p	12 30 p	X	7			
17	Qw	458	✓	Jones	-	9 25 a		9 45 a	X	7			Dump Water
18	Lvw	73	✓	Purcell	Turenne	9 30 a	-	-	X				Died up
19	Qw	304	✓	Decker	-	10 05 a		10 15 a	X	7			Dump Water
20	Lc	301	✓	Dyson	-	11 45 a		11 55 a	X	7			" "
21	Bo 1	3245	✓	O'Connor	Bailey	12 20 p	-	2 30 p	✓	8/11 ✓			Died up
22	Ob 11	3206	12 30 p ✓	Kay	Clements	-	2 40 p	2 50 p	X	7			
23	95 0	1596	✓	Pearson	Smith	-	3 30 p	3 30 p	X	7			
24	Qa 1	3219	✓	Dooley	Pierce	-	4 30 p	4 30 p	X	7			
25	Ob 6	3311	1 45 p ✓	O'Brien	Gonsales	-	5 24 p	5 30 p	X	7			
26	Bo 7	3348		Geoghan	Hanrahan	4 20 p	-	-	8/11 ✓				Tied up
27	Pa 1	3241		Thomas	Goldsmith	6 10 p	-	-	✓	8/12			" "
28	Pa 1	3240		Pelton	Dooley	6 31 p	-	-	✓				" "
29	Bo 2	3243	7 p ✓	Knoot	Ray	-	9 30 p	9 30 p	X	7			
30	Erie	3172	✓	Stidd	-	0 10 p	-	5 45 p	X	7			Dump water & Generator repairs 24
31	Lvw	58		Horn	Lebb	8 P	-	-	X				Tied up
32	Qw 5	3244		Kent	Foley	7 19 p	-	-	✓				" "
33	Erie	3306	✓	Cruikshank	-	10 C	-	10 10 p	X	7			Dump water
34	Lvc	305	✓	Buzzard	-	10 20 p	-	10 30 p	X	7			" "
35	Pa x	3248		Wilson	Fuoco	10 30 p	-	-	8/12				Tied up
36													
37													
38													
39													
40													
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													

2 - N
P - 1
W - 0

291

467-24

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Plaintiffs Ex. 152

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-10 19[illegible]

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullman									
11P	7a	3418	Helmer	Perina	-	-	-	-	-	-			Changed to Yard Job 3X.
7a	3P	3418	Seaboyer	Timmony	-	-	-	-	-	-			
3P	11P	3434	Doolittle	J Ruisaut	-	11 10P	3418 10 30	-	-	-		1	
			East Bound	Hump									
12a	9a	3222	Sherman	Myers	-	-	-	-	-	2 20a			
7a	3P	3223	Bunnell	Robertson	6 45a	-	-	-	-	-		1	
6P	1a	3224	Hickman	Dwyer	-	-	-	-	-	-			
			West Bound	Pullman									
11P	7a	3419	Foley	Knund	-	3a	3411 2 20	-	-	-		1	
7a	3P	3411	Mason	Jeffers	-	-	-	-	-	-	1		
3P	11P	3411	Mulligan	Belmont	-	11 12P	3419 10 30	-	-	-		1	
			West Bound	Hump									
3 30	1 30P	3223	Smith	Thompson	5a	-	-	-	-	1 30		1	
4P	1a	3223	Shelton	Lecher	4P	-	-	-	-	12 20a		1	
			Mine Div.										
7a	3P	3494	Kelly	Andersonn	7a	-	-	-	-	3 05 3P		1	Changed Yard Job 3X.
			Ex Sen.										
12a	5 30	3434	Stagl	Slickney						6 10a			
8a	3 20	3419	Ripley	Bacon	8a	-	-	-	-	-			
			Riptrack										E - 2 W - 4 M - 7 8
3 30	8P	3419	Ripley	Bacon	-	-	-	-	-	4P			

MID-NIGHT ENGINE SITUATION

A 3206 - 3234 - 3243 - 3343 -

B 534 - 3332 - 3104 - 3200 - 3202 - 3211 - 3224 - 3229

C 3201 - 3209 - 3236 - 3237 - 3550

D 3222 - 3223 - 3411 - 3418 - 3419 - 3434

Stored None

467-25

Plaintiff's Exhibit 16

(Photos opposite)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE 9-2 1959

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pollard									
11 PM	7a	3418	Nelms	Jamison	-	-	-	-	-	-	-	-	Separate Delay
7a	3P	3418	Heald	Cross	-	7 45a	3418 3434	-	-	-		1	
3P	11P	3419	Lunde	Burnett	-	11 40	3410 3434	-	-	-	29-4	1	
			East Bound	Hump									
12a	7a	3208	Decker	Sweeney	-	-	-	-	-	2 15a			
7a	3P	3208	Bunnell	Robertson	6 45a	-	-	-	-	-		1	
6P	12m	3208	Stage	Decker									
			West Bound	Phillips									
11P	7a	3410	Foley	Rinn	-	1 50a	3434	-	-	-		1	
7a	3P	3434	Misner	Jeffers	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Shepard	-	-	-	11 10a	3434 10a	-	29-4	1	
			West Bound	Hump									
5 30a	1 30p	3104	Smith	Thompson	Laid out with								
4P	12m	3104	Shehan	Pinckney	HP	-	-	-	-	12 30a		1	
			Misc	Switches									
7a	3P	3419	Kelly	Waite	7a	-	-	-	-	3419 5P	1.35	1	Engine on 7a 3410
			Shop	Switches									
8a	3 30	3104	Foley	Reisinger	8a	-	-	-	-	-		1	
3 30	4P	3214	Ripley	Reisinger	-	-	-	-	-	4P	9-5		E-3 W-3 M-1/2

MID-NIGHT ENGINE SITUATION

A 2357 3205.

B 3416-554-3216-3211-3215-3216-3221-3218-

C 3209-3226-3241-3343-

D 3104-3208-3214-3223-3410-3418-3419-3404

Stored Mond

(1)

468-1

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE Sept 3 192 9

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'T'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Hotel	150	11.5	S. Bryn	Richardson	3	1a	1a	X	X			
2	Lore	18		Hughes	Lott	-	1 50 a	1 50 a	X	X			
3	Pool 6	3206	11 45 p	Hickey	Davis	-	2a	2a	X	X			
4	Local	90		Tarrish	Engelenbach	12 55 a	-	-	X				Died up
5	Pool 3	3235	2a	Donovan	Chandler	-	4 15 a	4 15 a	X	X			
6	Ash	3244		Martin	Miller	1 50 a	-	-	V				Died up
7	Nos	3215		Alger	Gonsalvinsci	4 35 a	-	-	V	9/7			" "
8	Nos 3	3223		R Burnard	Burley	4 40 a	-	-					"
9	Obv	3244		Woodin	Delaney	-	8 30 a	8 45 a	X	X			
10	Ob 6	3550		Barber	Dow	-	9a	9a	X	X			
11	Nor	3247		Lyman	Vanbuskirk	6 35 a	-	-	V				Died up
12	Cure	3368		Frankl	—	6 55 a	-	7 15 a	X	X			Turn + Water
13	957	1596		Pierson	Smith	7 05 a	-	-	V				Tied up
14	Pool 11	3249		Gray	Courtney	7 20 a	-	-	V				" "
15	Ext a	90		Anders	Lockerbach	-	10 45 a	10 45 a	X	X			
16	Ob 4	3202		Wrenn	Bergen	-	10 45 a	10 50 a	X	X			
17	Ret	3240		Barnes	Brady	-	10 50 a	11 35 a	X	X			
18	Few	457		Jackson	—	8 55 a	—	8 50 a	X	X			Turn + Water
19	Cnj	823		Fischer	Hunter	8 10 a	-	-	V				Tied up
20	Pool	3270		Knapp	Purcell	8 40 a	-	-	V				" "
21	Oaw	455		McCann	—	9 45 a	-	10 25 a	X	X			Turn + Water
22	Oaw	458		Hoyt		10 45 a	-	10 50 a	X	X			" "
23	Ob 6	3343		Braswell	Jurley	-	2P	2P	X	X			
24	950	1596		Pierson	Smith	-	3 35 p	3 55 p	X	X			
25	Pool 11	3249	1 55 p	Gray	Courtney	-	3 45 p	3 40 p	X	X			
26	Oar	3244		Mallon	Webber	-	4 30 p	4 30 p	X	X			
27	Cure	3163		Hall	—	7 26	-	7 40 p		X			Turn + Water
28	Ob 5	3276		Buck	Moore	7 25 p	-	-	9-4				Tied up
29	Cnj	56		Bedford	Piper	7 55 p	-	-	X				" "
30	Cnd	468	X	Norfit	-	4 15	-	4 15 p	X	X			Turn + water
31	Eol	3209		Wells	Bacon	3 20 a	-	-	V	9-4			tied up
32	Rad	873		Fischer	Hunter	7	5 20 p	6 20 p	X	X			
33	Ray	3343		Simpson	Abell	3 50 p	-	-	V	9-4			
34	Onh	3247		Glynn	Heisberg	-	9 30	8 20 p	X	X			
35	Ona	3220		Alger	Gomerlinski	-	9P	9P	X	X			
36	Ex	3241		Fisher	Lyonnais	5 40 p	-	-	V				Tied up
37	Cnj	207		Buellman	—	6P	-	6 05 p	X	X			Turn + water
38	Pool	3200		Sealer	Ray	6 40 p	-	-	V				Tied up
39	Cure	3368	X	Paddleback	-	7 20 p	-	7 25 p		X			Turn + water
40	Cnj	206		Burgard	—	9 25 p	-	9 25 p		X			" "
41	Cnj	56		Bedford	Piper	—	11 25 p	11 25 p		X			
42													2 - 45
43													P - 1
44													W - 0
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

(24)

468-2

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different positions.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 9-2 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
				East Bound Pull out									
11P	7a	3418	Holmes	Hyndsor	-	-	-	-	-	-			
7a	3p	3418	Heald	Crowe	-	-	5:40	-	-	-	6 3/4	-	Leased
3p	11P	3419	Stage	Burnett	-	11P	5:40 / 10:30	-	-	-	11-3	1	
				East Bound Humps									
12a	8a	3208	Decker	Stickney	-	-	-	-	-	2 1/2			
7a	3p	3208	Bunnell	Robertson	6 1/2	-	-	-	/			1	4
6P	12m	3208	Dickie	Hinckley									
				West Bound Pull ups									
11P	7a	3434	Foley	Krum	-	-	-	-	-	-			
7a	3p	3434	Minnor	Jeffers	-	-	3:40	-	-	-			
3P	11P	3434	Mulligan	Shepard	-	12 1/2	10:30	-	-	-		1	
				West Bound Humps									
5 1/2a	1 1/2p	3044	Byrne	Richardson	5a	-	-	-	-	1 1/2p		1	
4P	12m	3104	Sheehan	Tenkney	4P	-	-	-	-	12 1/2	4 3	1	
				Mac Bentley									
7a	3	3419	Killey	White	7a	-	-	-	-	3		1	Changed from 3410

Z - 2
M - 3
m - 1
6

(6)

MID-NIGHT ENGINE SITUATION

A 3534 3206

B 3404-3208-3214-3203-3216-3221-3248

C 3344-3240-3202-3235-3350

D 3104-3208-3214-3203-3410-3418-3419-3404

Stored none

468-3

Form 1254

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

1

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any service except such as are assigned to outlaying service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** Sept 2 19 29

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	MX	3700	11 35 ✓	Rivinus	Fiala	-	7a	7a	X	7			
2	LH	95	-	Decker	Wilson	13 30 a	-	-	X				Laid up
3	FWE	56	1 55 ✓	Bedford	Pepin	-	4 30 p	4 30 a	X	7			
4	Pool 5	3205	✓	Irby	Higgins	-	4 35 a	4 35 a	X	7			
5	QB 1	3225		Grafton	Donovan	4 10	-	-	✓	7			Laid up
6	Pool 1	3236		C. Holmes	Schmidt	4 30	-	-	✓				" "
7	NO 5	3319		Clubine	Supsic	bad	-	-	✓	10 p			" "
8	QB 2	3348	✓	Thompson	Abell	-	8 50 a	8 55 a	X	7			
9	QB 6	3244	✓	M Foley	Waite	-	9a	9a	X	7			
10	Erie	3178	✓	Travis	-	6 27		6 27 a	X	7			Trim + Water
11	Pool 4	3237		Englund	Dunton	6 a	-	-	✓				Laid up
12	LWE	305	✓	Thomson	-	7 42	-	9 45 a	X	7			Turn
13	LH	95	✓	Decker	Wilson		10 a	10 32 a	X	7			
14	QB 4	3241	✓	Fisher	Cummings		10 a	10 32 a	X	7			
15	951	1496	✓	Purcell	Smith	7 05 a	-	-	✓				Tied up
16	Erie	3199	✓	Knapp	-	9 25 a		9 45 a	X	7			Turn + Water
17	BOW	4581	✓	Martin	-	10 15 a	-	10 25 a	X	7			" " "
18	DAK	70		Clark	Timmons	10 35 a	-	-	X				Tied up
19	VE 1	3209	✓	Belyo	Bacon		12 31 p	12 31 p	X	7			
20	BOW	451	✓	Hoffman	-	10 50 a	-	11 a	X	7			Turn + Water
21	Pool 6	3248	✓	Hilsheyer	Davies	11 10 a	-	-	✓	7			Tied up
22	QB 6	3319	✓	Clubine	Kinsler		2 p	2 p	X	7			
23	BOW	317	✓	Decker	-	1 25 p		1 45 p	X	7			Turn + Water
24	950	1596	✓	Purcell	Smith		3 35 p	3 35 p	X	7			
25	QA 7	3225	✓	Brown	Donovan		4 35 p	4 30 p	X	7			
26	BO 7	3344		Wisdin	Delaney	7 30 p	-	-	✓	9 3			Tied up
27	BO 5	3550		Barbera	Lego	3 10 p	-	-	✓				" "
28	EQ 1	3240		Bemis	Crabb	3 25	-	-	✓	9 3			" "
29	LH	70	✓	Purcell	Trimmer	-	6 25 p	6 30 p	X	7			
30	Erie	58	✓	Hughes	Lobb	5 p	-	-	X	7			Tied up
31	Erie	3163	✓	Cassinelli	-	5 p	-	5 10 p	X	7			Turn + water
32	QN 4	3245	6 20 ✓	Schenck	Leary	-	8 30 a	9 30 a	X	7			
33	QN 2	3243	6 20 ✓	Kildebrand	Anderson	-	9 p	9 15 p	X	7	12		Repairs to water pump Gauge plugged up
34	Erie	3202	-	Simms	Briggs	5 30 a	-	-	✓				Tied up
35	Pool 4	3237	8 20 ✓	Englund	Ahlen	-	11 p	11 p	X	7			
36	Pool 3	3235		Downey	Chevalier	7 30	-	-					Tied up
37	Erie	3251	✓	Reddaher	-	9 p	-	9 30 p	X	7			Turn + water
38	LH	91	✓	Keegan	-	10 40	-	10 40 p	X	7			
39	Pool 1	3236	✓	Hallisey	Hildebrant		7p	7p	X	7			
40													
41													7 - 14
42													P - 1
43													10 - 0
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

(75)

468-4

Form 1000-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **SAYBROOK ENGINE TERMINAL** — DATE 9-1 1949

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL ORDER	ENGINE TURNED	REMARKS
			East Bound / Pull out										
11P	7A	3418	Page	Stickney	-	-	-	-	-	-			
7a	3P	3448	Dennis	Lyons	-	-	-	-	-	-	4 Tons	-	Has not been
3P	11P	3419	Stage	F Bennett	-	11P	11P	-	-	-	1 Ton	1	
			East Bound	Humph									
12A	9A	3908	McGowan	Bissinger	-	-	-	-	-	2 10			
7a	3P	3908	Burnell	Robertson	6 1/2	-	-	-	-	-		1	
8P	12M	3906			-	-	-	-	-	-			
			West Bound / Pull up										
11P	7A	3434	Foley	Hanlon	-	-	-	-	-	-			
7a	3P	3434	Mooney	Kenaton	-	-	-	-	-	-			
3P	11P	3434	Mulligan	Shepard	-	[illegible]	[illegible]	[illegible]	[illegible]	-	1 Ton	1	
			West Bound	Humps									
3 30	1 30	3104	H Smith	Fahy	3 1/2	-	-	-	-	1 30		1	
4P	12M	3104	Sheehan	Tenafony	4P	-	-	-	-	12	9-2	1	
			Yard	Brakeman									
7a	3P	3419	Kirby	Conductor	7a	-	-	-	-	3		1	Changed engine 3418
			Shop	Assistant									
8a	3 40 P	3410	Ripley	Ryan	8a	-	-	-	-	-		1	
			Ripstack	Self									
3 40 P	4P	3410	Copley	Richardson	-	-	-	-	-	-	9-2		

6 - 2
11 - 4
11 - 2
8

MID-NIGHT ENGINE SITUATION

A 3352 - 3240 - 3206.

B 130-386-624-3280-3211-0716-3221-3223

C 3202 - 3209 - 3241 - 3243 - 3244 - 3245 - 3248

D [illegible] - 3214 - 3410 - 3418 - 3419 - 0404

Steam Off

(8)

468-5

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services, except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Sept 1st 19 9

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPTD	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool4	3236	11 7/10	C Hobson	Softenwell		1 1/2	1 1/2	X	✓			
2	Pool 4	3237	12 1/2	Engbeck	Dorton		2a	2a	X	✓			
3	Loc	90		Stevens	Breckenbeck	12 7/10	—	—	X				Laid up
4	Pool 6	3248	1/2a	Tuckey	Dare	—	4 1/2a	4 1/2a	X	✓			
5	Pool 3	3235	3 1/2a	Donovan	Walsh	—	6a	6a	X	✓			
6	Loc E	58		Pethick	Scott	—	6a	6a	X	✓			
7	Loc E	2077		H Gross	—	5 1/2a		6 1/2a	X	✓			Lunch + Water
8	Q 136	3314		Worden	Delaney	—	8 1/2a	8 1/2a	X	✓			
9	Q 136	3276		Buck	Moore	—	9a	9a	X	✓			
10	Loc	3176		Krupp		6 1/2a		6 1/2a	X	✓			Lunch + Water
11	Q 13	3323		Daley	Daley	6 1/2a	—	—	✓				Laid up
12	Q 105	3243		Fitzgerald	Hollenbeck	7 1/2a	—	—	✓				" "
13	Q 1	3224		Daley	Meyer	7 1/2a	—	—	✓				" "
14	Pool	90		Tunnell	Breckenbeck		10 1/2a	10 1/2a	X	✓			
15	Q 84	3217		Wenn	Fagan		10 1/2a	10 1/2a	X	✓			
16	Q 1	3245		Dobzynski	Daley	8 1/2a	—	—	✓				Tied up
17	Loc W	4529		Fife	—	9 1/2a	—	9 1/2a	X	✓			Lunch + Water
18	Loc V	3270		Reeves	Bradley		12 1/2p	12 1/2p	X	✓			
19	Loc	3224		Dewire	—	9 1/2a	—	10a	X	✓			Lunch + Water
20	Loc E	303		Barnaman	—	9 1/2a		10 1/2a	X	✓			Lunch + Water
21	Loc W	4531		Devine	—	10 1/2a	—	10 1/2a	X	✓			" + Water
22	951	1596		Purcell	Smith	7 1/2a	—	—	✓				Tied up
23	Pool 11	3249		Gray	Clements	11 1/2a	—	—	✓				" "
24	Loc	91		Nevill	—	12 1/2p	—	1 1/2p	X	✓			Lunch
25	Q 116	3373		Daley	Daley		2 1/2p	2 1/2p	X	✓			
26	950	1596		Purcell	Smith		3 1/2p	3 1/2p	X	✓			
27	Q 87	3274		Dooley	Pierce		4 1/2p	4 1/2p	X	✓			
28	Loc W	3215		Perkins	—	1 1/2p	—	1 1/2p	X	✓			Lunch + Water
29	Pool 7	3220		Troop	Murray	12 1/2p	—		✓				Tied up
30	Loc 9	904		Fischer	Koehler	10 1/2a	—	—	✓				" "
31	Q 87	3348		Simpson	Abell	2p	—	—	✓	9-V			" "
32	Q 81	3209		Pelto	Bacon	2 1/2p	—	—	✓	9-2			" "
33	Pool	904	✓	Fischer	Koehler	—	6 1/2p	6 1/2p	X	✓			
34	Pool 11	3249	4 1/2p	Lopez	Clements	—	7 1/2p	7 1/2p	X	✓			
35	Q 5	3244		Daly	Keats	2p	—	—	✓	9-V			Tied up
36	Loc	3241		Graber	Lawrence	4 1/2p	—	—	✓				
37	Loc	905	✓	Quallmann		6 1/2p	—	6 1/2p	X	✓			" " Time taken
38	Loc	325	✓	Hoecker	—	7p	—	7 1/2p	X	✓			" " "
39	Loc	301	✓	Bogard		6 1/2p	—	6 1/2p	X	✓			" " "
40	Pool 2	3220	✓	Hall	Stewart	—	10p	10p	X	✓			
41	Loc	56		Bedford	Piper	8p		—	X				Tied up
42	Pool 6	3205	✓	Daly	Niagara	8 1/2p	—	—	✓	9-V			" "
43	Loc	307	✓	Heifer		10 1/2p	—	10 1/2p	X	✓			Lunch + Water " "
44	Loc	3185	✓	Hutchinson		11p		11 1/2p	X	✓			
45													2 - 78
46													P - 1
47													W - 0
48													
49													
50													
51													
52													
53													
54													

468-6

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-31 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL ON HAND	ENGINE TURNED	REMARKS
			East Bound	Pullout									
11P	7a	3419	Holmes	Stickney	-	1	3418		-	-	-		1	Same as Below
7a	3P	3418	Nimis	Crow	-	-			-	-	-			
3P	11P	3419	Hurst	Burnett	-	11	3418		-	-	-		1	
			East Bound	Shunt									
12a	7a	3208	Hagaman	Decker	-	-	-	-	-	-	7			
7a	3P	3206	Heald	Robertson	6	-	-	-	-	-	-		1	
6P	12	3208	Hutchinson	Risinger			-	-	-	-	-			
			East Bound	Pullup									
11P	7a	3414	Foley	Vanderveer	-	1	3419		3	3214		-		1	Same as Below
7a	3P	3214	Nimis	Anderson	-	-	-		-	-	-			
3P	11P	3214	Mulligan	Shepard	-	5	3432		-	-	-		1	
			West Bound	Work									
5a	3P	3104	W. Smith	Thompson	5a	-	-		-	-	1		1	
4P	12	3104	Sheehan	Tenbarry	4P	-	-		-	-	5		1	
			Nine	Stretches										
7a	3P	3419	Kirby	Finch	7a	-	-		-	-	3418		1	change in 3P for 3418
			Stop	Switches										
8a	3	3410	Rigby	Richardson	-	-	-		-	-	-			E-3
3	4P	3410	P.P. Crack	Patterson	-	-	-		-	-	418			W-4
12a	8a	3410	Stage	Risinger	12a	-	-		-	-	-		1	M-2

9

MID-NIGHT ENGINE SITUATION

A 3252 · 3200 · 3206 ·

B 216 · 534 · 3210 · 3211 · 3216 · 3221 · 3223 · 150

C 3236 · 3237 · 3240 · 3314 · 3217 · 3218 · 3235

D 3104 · 3208 · 3214 · 3410 · 3418 · 3419 · 3434

Signed Mark

468-7

Form 1218-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 31 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	[illegible]	95			[illegible]	Wilson	12 24 a	—	—					Dead up
2	[illegible]	56		✓	Bostock	Gipps	—	3 10 a	3 10 a		7			
3	Local	553		✓	Estelle	Tribble	—	4 35 a	4 35 a		7			
4	Pool 4	3220	3 a	✓	Knight	Purcell	3 58 a	6 40 a	6 40 a		7			
5	A01	3211			Martin	Miller	3 50 a	—	—	9-6				Dead up
6	No 3	3215			Algeo	Hanna	4 30 a	—	—	✓				" "
7	01BY	3344		✓	Fitch	Abbott	—	8 30 a	8 35 a		7			
8	0136	3550		✓	Barber	Dow	—	9 a	9 a		7			
9	Pool	2191		✓	Kraus		6 12 a		6 31 a		7			Turn + Water
10	205	3319			Abelson	Beasley	6 20 a	—	—	✓				Dead up
11	[illegible]	307		✓	Bryson	—	6 [illegible] a		6 51 a		7			Turn + Water
12	951	1596			Passage	Smith	7 01 a	—	—	✓				Tied up
13	[illegible]	95		✓	Dreher	Wilson		10 22 a	10 22 a		7			
14	1104	3241		✓	Fisher	Dupree		10 22 a	10 22 a		7			
15	Pool	3247			Klipa	Varley	7 35 a	—	—	✓				Tied up.
16	0BW	459		✓	Jablonsan	—	8 43 a	—	8 54 a		7			Turn + Water
17	0BW	459		✓	McCann	—	8 [illegible] a	—	9 02 a		7			" "
18	[illegible]	80		✓	Cunell	Timmins	8 40 a	—	—					Tied up
19	[illegible]	307		✓	Lott		10 07 a	—	10 12 a		7			Turn + Water
20	02Y	3209		✓	Blythe	Bacon		12 25 p	1 20 p		7			
21	1106	3319		✓	Sheldon	Beasley	—	1 15 p	1 25 p		7			
22	0BW	375		✓	Dreher	—	12 32 p	—	1 40 p		7			Turn + Water.
23	[illegible]	3205	✓	✓	Boyce	McDonald	—	3 p	3 p		7			
24	950	1596		✓	Buchanan	Smith	—	3 35 p	3 35 p		7			
25	0BY	3245		✓	Martin	Miller	—	4 32 p	4 30 p		7			
26	[illegible]	73		✓	Connell	Timmins	—	2 20 p	5 50 p		7	30		Off 2 Cars Stored at Water Connection
27	Coal	3178		✓	Judd	—	4 05 p	—	4 20 p		7			Turned on to Tie Ups
28	BOT	3314			Rhodes	Delaney	4 50 p	—	—	✓				
29	0114	2947	3 30 p	✓	Kilpatrick	Vosburgh	—	5 30 p	8 00 p		7			
30	0112	3215	"	✓	Algeo	Hanna	—	9 p	9 p		7			
31	0W	375		X	Reichler	—	5 40 p	—	6 50 p		7			Turned on to Tie Ups
32	Pool 4	3237			English	Nealon	5 30 p	—	—	✓				
33	[illegible]	306		✓	Pallmon	—	6 50 p	—	7 p		7			Turn + water Tie Ups
34	[illegible]	58			Ratzelle	Kelly	6 30 p	—	—					
35	[illegible]	2240			Bruno	Grady	6 50 p	—	—	✓				" "
36	[illegible]	3202			Hamm	Fuoco	7 30 p	—	—	✓				" "
37	[illegible]	3296			Ducat	Moore	8 20 p	—	—	✓				" "
38	Pool 3	3235			Emerson	Welsh	8 20 p	—	—	✓	9-3			" "
39	Pool 2	3241			Hickey	Dore	8 40 p	—	—	✓				" "
40	[illegible]	3191		X	Guldenbach	—	8 00 p	—	9 05 p		7			Turn + water
41	[illegible]	301		✓	Daggard	—	9 [illegible] p	—	9 03 p		7			Turn + water
42	EX	159			Reynolds	Welch	9 40 p	—	—	9-3	8.9-3			Tie Ups
43														
44														
45														7 — 75
46														D - 1
47														W -
48														
49														
50														
51														
52														
53														
54														

(24)

468-8

Form 1015-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-30 1927

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dept'd	Arrived	Dept'd	Arrived	Dept'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound / Bull Run										
11P	7a	3434	[illegible]	Hanratia	-	-	-	-	-	-		-	Changed to 3434
7a	3P	3434	[illegible]	Lowe	-						4 11		
3P	11P	3419	H Burr	Burnett				-	-	-	8/31		
			East Bound / Harris										
12a	7a	3208	[illegible]	Dickson	-	-	-	-	-	-			
7a	3P	3208	Thald	Robertson	6½	-	-	-	-	-		1	
6P	12m	3208	Heckman	Dickson	-	-	-	-	-	-			
			West Bound / Phillips										
11P	7a	3419	Foley	Fisk	-	3½a	3214	[illegible]	-	-		1	
7a	3P	3214	Minner	Anderson	-	-	-	-	-	-			
3P	11P	3214	McElligan	Shepard	-	11½p	3434 / 10½p		-	-	8/31	1	
			West Bound / Harris										
12m	7a	3104	Emrich	Thompson	5a	-	-	-	-	7½a		1	
4P	12m	3104	Sheehan	Pinckney	4P	-	-	-	-	12½m	8/31	1	
			Yard / Switcher										
7a	3P	3419	Kelly	Buckner	7a	-	-	-	-	3P		1	Changed to 3214
			Yard / Switcher										
12m	8a	3440	Stage	Risinger	12m	-	-	-	-	-		1	
			Shop / Switcher										
8a	3Cp	3410	Hawks	Risinger	-	-	-	-	-	-			E - 1
			Repairs										W - 11
3Cp	4P	3410	Smith	Risinger	-	-	-	-	-	4P			M - 2
													7

MID-NIGHT ENGINE SITUATION

A 3252 - 3200 - 3206 -

B 155 - 366 3210 - 3221 - 3223 - 3225 3236

C 3209 - 3216 - 3245 3241 - 3244 - 3250 - 3260

D 3104 - 3208 3214 - 3410 - 3418 3419 - 3434

Do not send this sheet

(1)

468-9

Form 1475-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE: Aug 30 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPTD.	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Lwe	4-8	11 30 P	Jones	Litt	-	1 35 a	1 35 a	X	7			
2	4TH	90		Clemens	Deackenbrook	12 45 a	-	-	X				Laid up
3	Pool 4	3237	12 a	Englisk	Donlon	-	4 45 a	4 45 a	X	7			
4	Pool 3	3235		Donovan	Canaler	3 a	-	-	✓				Laid up
5	Pool	3244		C. Brown	McDonald	3 15 a	-	-	✓				" "
6	No 5	3243		J Fitzgerald	Gildersleeve	3 30 a	-	-	✓				" "
7	Pool 6	3246	4 15 a	Shields	Davis	-	6 45 a	6 30 a	X	7			
8	0B7	3329		Mockler	Delaney	-	8 30 a	8 22 a	X	7			
9	0B6	3246		M Foley	C. Jones	-	9 a	9 a	X	7			
10	LWE	307		Bryson	-	6 30 a		6 30 a	X	7			Turn + Water
11	Pool 3	3314		R Burwell	J Walsh	5 45 a	-	-	✓				Laid up
12	Erie	3267		Kings	—	6 55 a		7 44 a	X	7			Turn + Water
13	951	1596		Pierson	Smith	7 15 a	-	-	✓				
14	Boi	3245		Calhoun	Lesley	7 10 a	-	-	✓				
15	4TH	90		Clemens	Deackenbrook		10 30 a	10 32 a	X	7			
16	0B4	3247		Mason	Finnegan		10 30 a	10 30 a	X	7			
17	gaw	401		Fife	—	1 45 p	-	9 02 a	X	7			Turn + Water
18	gaw	457		Dolegas	—	9 20 a	-	9 38 a	X	7			Turn + Water
19	Eng	895		Fischer	Kantlen	9 45 a	-	-	✓				Tied up
20	Erie	307		Labb	—	10 05 a	-	10 4 a	X	7			Turn
21	Pool 11	3249		Gray	Clements	9 45 a	-	-	✓				Tied up
22	0B7	3240		Burgess	Brady	-	12 35 p	12 50 p	X	7			
23	gaw	43		Decker	—	11 52 a	-	12 05 p	X	7			Turn + Water
24	3N6	3314		Burwell	Walsh	-	2 P	2 P	X	7			
25	Pool 3	3235		Donovan	Chandler	-	3 P	3 P	X	7			
26	950	1596		Pierson	Smith	-	3 35 p	3 30 p	X	7			
27	0B7	3244		Brown	McDonald	-	4 35 p	4 30 p	X	7			
28	Shop	3342		—	Dawson	-	4 35 p	4 30 p	X	7			Turned to shop
29	Eng	895		Fischer	Kaylor	-	6 P	6 P	X	7			
30	0B7	3244		Feeth	Abell	2 40 p	-	-	✓	7	8/31		Tied up
31	0W	43	X	Decker	—	-	5 05 p	0 10 p	X	7			Turn + Water
32	0W4	3245	6 15 a	Calhoun	Leary	-	5 30 p	5 30 p	X	7			
33	0W2	3243		Fitzgerald	Gildersleeve	-	9 P	9 P	X	7			
34	Eg1	3209		Betts	Brown	6 15 p	-	-	✓				Tied up
35	Erie	54		Bedford	Capper	6 45 p	-	-	X				
36	Local	553		Cobble	Colvil	6 30 p	-	-			8/31		
37	Erie	3161		Francisco	—	7 15 p	-	7 25 p	X	7			Turn + Water
38	Erie	306		Richlemen	—	7 55 p	-	8 P	X	7			Turn + Water
39	Pix	3241		Fisher	Desmond	8 15 p	-	-	✓				Tied up
40	Pool 5	3550		Gorkin	Dew	9 25 p	-	-			8/31		
41	Pool 11	3249		Gray	Clements	—	11 P	11 C	X	7			
42	Erie	3354		Cuddeback	—	9 30 p	-	9 40 p	X	7			Turn + water
43	Pool 5	3205		Ray	McDonald	9 20 p	-	-			8/31		Tied up
44	Erie	301		Dunyard	—	9 45 p	-	9 55 p	X	7			Turn + Water
45	Pool 1	3200		Nobles	Goldsmith	10 15 p	-	-			8/31		Tied up
46													
47													7 — 47
48													P — 1
49													
50													
51													
52													
53													
54													

7

10

468-10

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8-29 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep't	TIME Arrived	TIME Dep't	TIME Arrived	TIME Dep't	TIME Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			Yard Board	Pusher Crew									
11P	7A	3434	Holmes	Fish	-	-	-	-	-	-			See note below
7A	3P	3434	G. Burns	Cross	-	-	-	-	-	-	3 55/60		
3P	11P	3419	Doolittle	Rinnert	-	10 10/60	3434 3410	-	-	-		1	
			Yard Board	Shunters									
12A	8A	3208	Hutchinson	Richardson	- 0 1/2	-	-	-	-	2 1/2			
7A	3	3208	Hield	Richardson	6 1/2	-	-	-	-			1	
6P	12	3208			-	-	-	-	-	-			
			Yard Board	Switchmen									
11P	7A	3214	Foley	Stickney	-	-	-	-	-	-			
7A	2P	3214	Mercer	Argersky	-	-	-	-	-	-			
3P	11P	3214	Mulligan	Shepard	-	-	-	-	-	-	8/30		
			Yard Board	Shunters									
12M	12N	3104	Lynch	Flanagan	5A	-	-	-	-	1 30		1	
4P	12M	3104	Sheehan	Tomkins	4P	-	-	-	-	11 1/2	8/30	1	
			Main Board	Switchmen									
7A	3P	3419	Kelley	Risinger	7A	-	-	-	-	3435 30		1	Changed engine 3434
			Yard Board	Switchmen									
8A	3P	3410	Ripley	Anderson	8A	-	-	-	-	-		1	
3P	4P	3410	Ripley	Anderson	-	-	-	-	-	4P			2 - 2 W - 2 M - 1/2

MID-NIGHT ENGINE SITUATION

3255 · 3208 · 3214

3434 · 3410 · 3419 · 3223 · 3230 · 3236 · 3242 · 3418

3166 · 3114 · 3229 · 3237 · 3240 · 3206 · 3248

3104 · 3208 · 3214 · 3410 · 3419 · 3404

Stored 0 | 0 | 2

468-11

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 29 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Local	31-6	11:35a	Bedford	Pyne	—	7:20a	7:45a	X	7			
2	Pool	3231	12 m	Short	Purcell	—	3a	7a	X	7			
3	Local	91		Decker	Nilson	12:30p	—	—	X				Laid up
4	Local	30		Bryson	—	2:45p		2:15p	X	7			Turn + Water
5	Local	31-6		Castle	Seifel	—	4:30p	4:45p	X	7			
6	Pool	3236		Dooley	Prince	3a	—	—					Laid up
7	NO 5	3215		Alger	Komuniski	4:45p	—	—					" "
8	OB 7	3239		Coltrain	Abell	—	8:45a	8:45a	X	7			
9	OB 6	3236		Russ	Moore	—	9a	9a	X	7			
10	Pool 1	3201		Slater	Hawk	—	6:45a	6:00p	X	7			
11	Local	451		Fifer	—	7 ok		7:15a	X	7			Turn + Water
12	951	1596		Pierson	Smith	7:05a	—	—					Tied up
13	Local	3161		Franks	—	7:40a	—	7:20a	X	7			Turn + Water
14	No 3	3319		Sherman	Gussler	7:35a	—	—					Tied up
15	Hot C	303		Cobb	—	8:22a		8:30a	X	7			Turn
16	Pool	3242		Flynn	Dooley	7:17a	—	—					Tied up
17	Local	95		Dibner	Wolodzi	—	10:15a	10:25a	X	7			
18	615	3241		Tighe	Lawrence	—	10:25a	10:30a	X	7			
19	Local	3209		Betts	Bacon	—	12:34p	12:35p	X	7			
20	Local	458		Owen	—	8:45a	—	8:45a	X	7			Turn + Water
21	Local	73		Purcell	Trimmer	9:25a	—	—	X				Tied up
22	Pool	3211		Holmes	Goldsmith	9:45a	—	—					Tied up
23	Local	406		Decker	—	1P	—	1:00p	X	7			Turn + Water
24	No 6	3319		Sherman	Gussler	—	3:30p	3:30p	X	7			
25	950	1596		Pierson	Smith	—	3:30p	2:30p	X	P			
26	Local	3211		Dooley	Prince	—	4:00p	4:30p	X	7			
27	Local	3174		Hall	—	8:30p	—	2:30p	X	7			Turn + Water
28	Local	73		Purcell	Trimmer	—	5:40p	5:30p	X	7			
29	Pool	3244		Foley	Jones	4:05p	—	—	✓	8/30			Tied up
30	Local	406		Decker	—	4:50p	—	5P	X	7			Turn + water
31	Mail	3220	4:50p	Holmes	Goldsmith	—	7P	7P	X	7			
32	Local	3249		Glynn	Yorkey	—	7:30	8:30p	X	7			
33	Local	3215		Alger	Komiliski	—	9P	9:20	X	X			
34	Pool	3229		Goodwin	Delaney	4:30p	—	—	✓	8/30			Tied up
35	Local	59		Jones	Robb	5:30p	—	—	X				" "
36	Local	306		Bradbury	—	8:30p	—	Pro	X	7			Turn + water
37	Pool	3237		English	Dunbar	Pro	—	—	8-30				Tied up
38	Local	301		Burgard	—	9:30p	—	9:40p	X	A			Turn + water
39	Pool	3240		Gubbins	Brady	9:30p	—	—	✓	8-30			Tied up
40	Local	3050		Cuddeback	—	9:30p	—	9:30p	X	7			Turn + water
41	Local	3206		Nunn	Fuscigna	10:40p	—	—	8-30	9-3			Tied up
42	Pool	3248		Hawkins	Jones	10:00p	—	—	8-30				" "
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													

L - 76
P - 1
W - 0

(27)

468-12

Form 1972-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 28 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull up										
11P	7a	3434	J Holmes	Richardson	-	-	-	-	-	-			
7a	3P	3434	Burr	Coons	-	-	-	-	-	-	5 3P		engine to Maybrook
3P	11P	3419	Doolittle	F Burnett	-	11P	3434 10 3P				28/29	1	
			East Bound Hump										
12m	2a	3208	Heckman	Hamtolo	-	-	-	-	-	320a			
7a	3P	3208	Heald	Peterson	1.43a	-	-	-	-	-		1	
6P	12-	3208	Heckman	Fish		-	-	-	-	-			
			West Bound Pull up										
11P	7a	3223	A Foley	Fish	-	135a	3410 11 3P	-	-	-	9-3	1	
7a	3P	3410	Mann	Jeffers	-	-			-	-			
3P	11P	3410	B Mulligan	Shepard	-	-	11P	3P 10 3P	-	-		1	
			West Bound Hump										
530a	130P	3104	Smith	Thompson	5a	-	-	-	-	1 3P		1	
4P	12-	3104	Sheehan	Pinckney	4P	-	-	-	-	12 12	8/29	1	
			Main Ave										
7a	3P	3419	Slagle	Sweeney	7a	-	-	-	-	3P		1	changed nos for 3434
			Ex Ave										
8a	4P	3214	Rapley	Akerley	8a	-	-	-	-	4P		1	

8 - 2
10 - 4
11 - 2
8

MID-NIGHT ENGINE SITUATION

A 3233 - 3226 - 3231

B 3434 - 3419 - 3410 - 3223 - 3208 - 3214 - 3104

C 316 - 366 - 3229 - 3222 - 3220 - 3241 - 3201 - 3333 - 3200

D 3104 - 3214 - 3211 - 3410 - 3419 - 3434

Stored 9, Dill

8

468-13

Form 1073-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE 8/28 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'T'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Bos'n	3249	1130 R	Englis	Dorlon	-	1 30 E	1 30 a		7			
2	L&H	90		Jenson	Lucaccumbino	12 35 a	-	-					
3	Lcar	57	1 E	Harding	Kott	-	2 40 E	2 15 a		7			Tied up
4	Bos 6	3248		Hiney	Davis	-	3 E	3 E		7			
5	Bo1	3224		Martin	Miller	3 45 E	-	-					
6	Bos 3	3211		Donovan	Chandler	-	6 10 E	6 10 a		7			Tied up
7	Nos	3206		FitzGerald	Goldenberg	4 30 E	-	-					
8	Exp	3214		Barnes	Mendenhall	5 25 a	-	-					Tied up
9	Bx	3340		Noodin	Delaney	-	6 E	6 30 a		7			" "
10	Bx6	3350		Barber	Dow	-	9 E	9 a		7			
11	Erie	3193		Kraus		6 40 E	-	6 50 a		7			Turn
12	No3	3339		Brainard	Ross	6 10 E	-	-					Tied up
13	Exp	45		Jackson	-	7 15 a	-	7 35 a		7			Turn + Water
14	957	1596		Curran	Smith	7 05 a	-	-					Tied up
15	Bne	307		Cobb	—	7 43 a	-	7 46 a		7			Turn
16	Bo1	3215		Hetrick	Seeley	7 40 a	-	-					Tied up
17	L&H	90		Tenney	Quackenbush		10 20 a	10 20 a	X	7			
18	Bos	3206		Wynn	Walsh		10 30	10 30 a	X	7			
19	NCY	3240		Gilkey	Brady		12 30 p	12 30 p	X	7			
20	CNJ	903		Beecher	Sanders	9 15 a	-	-	✓				Tied up
21	Bne	1460		Connors	—	10 45 a	-	10 20 a	X	7			Turn + Water
22	L&H	305		Bryan	—	11 50 a	-	12 05 p	X	7			"
23	no6	3339		Buswell	Ross		2 40	2 10 p	X	7			
24	950	1596		Curran	Smith		3 50 p	3 20 p	X	7			
25	Exp	3216		Martin	Miller		4 30 p	4 30 p	X	7			
26	Exp	405		Dyckman	—	12 20 p		12 50 p	X	7			Turn + Water
27	Bos 11	3214		Gray	Walsh	12 45 p	—	—	✓	8-31			Tied up
28	Erie	3191		Steele	-	8 00 p	-	8 40 p	X	7			Turn + Water
29	Bo6	3206		Quick	Moore	4 10 p	—	—	8 ✓	8-29			Tied up
30	CNJ	903		Fischer	Kessler	—	8 00 p	8 20 p	X	7			
31	Del	405		Decker	—	4 05 p	-	4 ✓	X	7			Turn + Water
32	Exp	301		Reichen	—	5 15 p	-	5 25 p	X	7			" "
33	Bo7	3223		Colbourne	Shell	5 10 p	-	-	✓				Tied up
34	Bos 2	3230		Swenk	Purcell	5 10 p	-	-	✓	8-29			" "
35	Bo1	3209		Reilly	Bogan	5 20 p	-	-	✓				" "
36	Local	357		Erbe	Goshel	6 20 p	-	-	8-29				" "
37	Milford	366			Vogtsenberger	6 30 p	-	-	7-30				" "
38	Bo14	3240	6 30 R	Hetrick	Seeley		8 30 p	8 30 p	X	7			
39	Bo12	3243	"	FitzGerald	Gildenhorn	-	9 P	9 P	X	7			
40	Ex	3241		Fishman	Lawrence	7 40 p	-	-	8 29				
41	Erie	306		Raymond	—	7 05 p	-	7 10 p	X	7			Tied up
42	Erie	62		Bickford	Boyce	6 10 p	-	-	X				Turn + Water
43	Bo11	3216		Healy	Clements	—	10 P	10 P	X				Tied up
44	Erie	3176		Cuddeback	—	8 30 p	-	8 40 p	X	7			
45	Bo5	3205		Jenkins	Hawkins	8 20 p	-	-	8-29				Turn + Water
46	Nx	3200		R.O. Ducket	Anderson	10 30 p	-	-	8-29	9-1			Tied up
47													" "
48													
49													7 — 6
50													P — 1
51													W —
52													
53													
54													
55													
56													

(76)

468-14

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE Aug 27 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	TIME Arrived	TIME Dep'd	TIME Arrived	TIME Dep'd	TIME Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pickard									
11P	7a	3418	F. Holmes	Richardson									
7a	3P	3418	Neall	Coons							8-30	—	Relieved
7P	11P	3419	Doolittle	F Bennett		11 10P	3224 10 30P					1	Laid off
			E Bound	Stump									
12m	8a	3208	Nickerson	Decker						2 40a			
7a	3P	3208	Stage	Robinson	6 15a							1	
6P	12m	3208	Mechanic	Danielson									
			West Bound	Pickup									
11P	7a	3223	D. Foley	Fish		4 30a	3215 4 45a			3410 7 45a		1	
7a	3P	3223	Minnie	Jeffers	6 45a							1	Two jobs Helper Bunkhouse & Jones Helper Bunkhouse Jones + 3410 Lunch on at 7 45a
3P	11P	3473	Stage	Shepard									
			West Bound	Stump									
5 30a	3 30P	3104	Smith	Thompson	5 45a					1 30		1	
4P	12m	3104	Sherbar	Tinsley	7P					12 7P 8/28		1	
			Main, SW										
7a	3P	3419	Burr	Ackley	7a					3 7P		1	Laid off Yd for 3419
			Exp Sw										
8a	3 30P	3410	Ripley	Stewart									6 — D
			Rep Index										W — 4
3 30P	4P	3410	Ripley	Stewart						4P		1	M — 2
													8

MID-NIGHT ENGINE SITUATION

A 2352

B 554 - 3210 - 3221 - 3225 - 3235 - 3243 - 3342 - 3418

C 3302 - 3211 - 3240 - 3248 - 3249 - 3344 - 3522

D 3104 - 3208 - 3223 - 3410 - 3419 - 3434

Stored

468-15

Form 1070-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of **ARRIVAL** and **DEPARTURE** of all **ENGINES** and **ENGINE CREWS** dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 27 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Light	56	10 45a ✓	Bedford	Carter	—	12 30p	12 30p	X	7			
2	Coal	3220	11 30a ✓	Symms	Powell	—	1 30p	1 30p	X	7			
3	Lt H	95		Dearing	Wilson	12 30p	—	—	X				Tied up.
4	Coal	3205		Brown	Master	2 10p	—	—	✓				" "
5	Pool 5	3205	2 45p ✓	Scalzo	Roy	—	5p	5p	X	7			
6	Mo 6	3215		Alger	Gibney	3 10p	—	—					Tied up
7	Local	356	✓	Eyrie	Loftus	—	5 11p	5 15p	X	7			
8	No 3	3219		Sheehan	Gessler	4p	—	—	✓				Tied up.
9	613	3348	✓	Coleman	Abell	—	8 30a	8 30a	X	7			
10	0136	3244	✓	Kane	Foley	—	7a	9a	X	7			
11	Yard	458	✓	Duncan	—	7 25a		7 35a	X	7			Turn + Water
12	951	1596	✓	Pearson	Smith	7 05a	—	—	✓				Tied up
13	Local	307	✓	Bradbury	—	7 23a	—	7 43a	X	7			Turn + Water
14	Eyre	3191	✓	Frantz	—	7 50a	—	8 10a	X	7			" + "
15	Lt H	73	✓	Purcell	Timmins	8 15a	—	—	X				Tied up
16	Lt H	95	✓	Dicker	Wilson		10 45a	10 45a	X	7			
17	BNY	3241	✓	Fischer	Lawrence		10 30a	10 30a	X	7			
18	CE Y	3209	✓	Biffle	Bacon		12 35p	1 30p	✓	7			
19	Coal	3247		Clymer	Thackery	7 15a	—	—	✓				Tied up
20	Pool	3236	✓	Holmes	Goldsmith	9 10a	—	—	✓				" "
21	Local	306	✓	Jones	—	10 15a	—	11 05a	X	7			Turn
22	Yard	451	✓	Hoffman	—	11 05a		11 10a	X	7			"
23	Yard	465	✓	Decker	—	12 50p	—	1p	X	7			Turn + Water
24	Coal	3219	✓	Sheehan	Gessler		xp	xp	X	7			
25	MHC	3214	✓	RO Decker	Anderson		3p	3p	X	7			
26	950	1596	✓	Pearson	Smith		3 35p	3 50p	X	7			
27	Coal	3236	✓	Brown	Waite		4 30p	4 40p	X	7			
28	Pool 4	3237		English	Dunlap	1 50p	—	—					Tied up
29	Erie	3174	✓	Stiles	—	1 20p	—	1 30p	X	7			Turn + Water
30	Pool 4	3237		English	Dunlap	1 50p	—	—	✓				Tied up
31	Box 7	3344		Wooden	Delaney	3p	—	—	✓ 48-38				" "
32	Lt H	73	✓	Purcell	Timmins	—	5 30p	5 30p	X	7			
33	Pool 6	3248		Hussey	Sykes	5 15p	—	—	8-28				Tied up
34	Lt E	57		Harding	Lotz	5 45p	—	—	X				" "
35	Box 5	3550		Barber	Dan	6 05p	—	—	8-28				" "
36	Mx	3202	✓	Wrenn	Nabel	7p	—	—	8-28				" "
37	Lt H	3247	✓	Clymer	Yarbrough	—	8 30p	8 30p	X	7			
38	Mx	3215	✓	Alger	Gibney	—	9p	9p	X	7			
39	Pool 1	3237	8p ✓	C Holmes	Goldsmith	—	10p	10p	X	7			
40	Lt E	301	✓	B Benjamin	—	8 30p		8 30p	X	7			Turn + Water
41	Erie	3351	✓	Cuthbertson	—	9 30p		9 50p	X	7			" "
42	Pool 3	3211		Spencer	Lander	10p	—	—	8-28				Tied up
43	Lt E	307	✓	Benjamin	—	10 45p		10 45p	X	7			Turn + Water
44	Pool	3240		Bolton	Brady	12 30p	—	—	✓ 48-38				Tied up.
45													
46													
47													7: 36
48													P-1
49													W-0
50													(36)
51													
52													
53													
54													

468-16

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE Aug 26 1929

WORKING HOURS From	To	ASSIGNED LOCATION OF ENGINES AND CREWS Engine	Engineer	Fireman	TIME Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound Pull out										
11P	7A	3418	F Holmes	Strickney									
7A	3P	3418	Heald	Corno		8 45A	3418 3P				5-7P	1	Leave with Caboose
3P	11P	3419	Doolittle	F Burnett				11 10P	3418 10 30P		8-9P	1	Hang up in front for 3419
			East Bound Hump										
1AM	2A	3208	Nickerson	Decker						2 00A			
7A	3P	3208	Stage	Rotenstein	6 45A							1	
6P	1AM	3208	Henderson	Deskeen									
			West Bound Pull up										
11P	7A	3410	D Foley	Stewart		11 55A	3424 12 45A					1	
7A	3P	3424	Means	Jeffers									
3P	11P	3434	Mulligan	Shepard		11 10P	1223 10 30P				8/7	1	
			West Bound Hump										
5 30A	1 30P	3104	Smith	Thompson	5A					1 30P		1	
4P	12M	3104	Strahan	Dunleavy	4P					11 40P	8/7	1	
			Mon PM										
7A	3P	3419	Burns	Anderson	7A					3 40P		1	Changed Hood from 3410

E - 3
M - 4
M - 1
8

MID-NIGHT ENGINE SITUATION

A 3252 - 3220 - 3248

B 554 - 3210 - 3221 - 3225 - 3235 - 3243 - 3342

C 356 - 3209 - 3241 - 3244 - 3249 - 3214 - 3434

D 3104 - 3208 - 3223 - 3410 - 3418 - 3419

Stored

(8)

468-17

Form 1873-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — DATE 8/26 192 9

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEPT'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Pool 6	3219	11 50 P ✓	Nying	Davis	—	2 a	2 a	X	7			
2	Loc N	90		Jensen	Succumbus	12 30 a	—	—	X				Tied up -
3	Pool 11	3248		Bunnell	Clement	3 50 a	—	—	✓				" "
4	Loc 4	57	✓	Mutter	Lobb	—	6 a	6 a	X	7			
5	Acc 1	3225	1	Dooley	Peirce	4 15 a	—	—	✓	8/31			Tied up
6	Pool 3	3245	4 30 a ✓	Donovan	Chandler	—	6 55 a	6 55 a	X	7			
7	Acc 3	3214		Daly	Ross	5 25 a	—	—	✓				Tied up -
8	OB 2	3339	✓	Worthen	Delaney	—	8 30 a	8 [illegible]	X	7			
9	PB 6	3226	✓	Quee	Moore	—	9 a	9 a	X	7			
10	751	554	✓	Duncan	Smith	7 05 a	—	—	✓	10/17			Tied up
11	Loc W	458	✓	Downes	—	10 a	—	9 [illegible] a	X	7			Turn + Water
12	Cpl	604	✓	Fischer	Elbetts	9 45 a	—	—	✓				Tied up
13	Pool	90	✓	Jensen	Quackenbush		10 a	10 a	X	7			
14	OB 1	3204	✓	Warren	Fuego		10 30 a	10 [illegible] a	X	7			
15	Pool	3240	✓	Allen	Brady		11 30 a	11 [illegible] a	X	7			
16	Loc W	454	✓	Fife	—	10 45 a	—	10 [illegible] a	X	7			Turn + Water
17	Pool	3216	✓	Donnelly	Purcell	10 a	—	—	✓				Tied up
18	Loc W	405	✓	Decker	—	10 45 a	—	10 50 a	X	7			Turn + Water
19	Acc	3183	✓	Krank	—	11 [illegible] a		11 [illegible] a	X	7			
20	Loc	3248	✓	Daley	Ross		7 p	7 p	X	7			
21	Pool 11	3214	✓	Bunnell	Clement		3 p	8 p	X	7			
22	950	1596	✓	Duncan	Smith		3 [illegible] p	3 [illegible] p	X	7			
23	Loc	3234	✓	Dooley	Peirce		4 [illegible] p	4 [illegible] p	X	7			
24	Acc	3187		Stark	—	2 p	—	2 [illegible] p	X	7			Turn + Water
25	Pool 5	3249		Teator	Ray	2 [illegible] p	—		8-27				Tied up
26	Loc	3220		Bell	Houston	3 p	-	-	✓	8-27			Died up
27	Bos	3244		Kane	Foley	3 [illegible] p	-	-	✓				" "
28	Bos 2	3248		Colbourn	Atkell	3 [illegible] p	-	-	✓	8-27			" "
29	Cpl	904	✓	Fischer	Elberts	-	6 p	6 p	X	7			
30	Loc E	56		Bedford	Piper	3 [illegible] p	-	-	X				Died up
31	Loc W	306		Blizzard	-	5 [illegible] p		5 [illegible] p	✓	7			Turn + Water
32	Loc W	405	✓	Decker	-	5 [illegible] p		5 [illegible] p	X	7			" "
33	Loc W	3216	✓	Debrick	Hart	-	8 [illegible] p	8 [illegible] p	X	7			
34	Loc W	3200	✓	Fitzgerald	Biederstedt	-	9 p	9 p	X	7			
35	Loc E	301	✓	Bryson	-	6 p		6 [illegible] p	X	7			Turn + Water
36	Loc	3241	✓	Fisher	Lawrence	6 [illegible] p	-	-	✓				Died up "
37	Pool	3361	✓	Huddleston	—	8 [illegible] p		8 [illegible] p	X	7			Turn + Water
38	Loc W	307		Lott	-	8 [illegible] p		8 [illegible] p	X	7			" "
39	Loc	356		Estelle	Gerbil	9 p	-	-	8/27				Died up
40													
41													
42													
43													
44													
45													7 - 24
46													P - 1
47													W - 0
48													
49													
50													
51													
52													
53													
54													

24

468-18

Form 1000-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** Aug 25 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pullout									
11P	7a	3418	J. Holmes	Parsons									
7a	3P	3418	Hurd	Corno.							7/26	- -	remote Steam Shovel in yard for 3419
3P	11P	3419	Doolittle	F Bassett		11 10P	3418 10 20P				7/26	1	
			West Bound	Pull up									
12a	7a	3208	Hutchinson	Hawkins						2 20a			
7a	3P	3208 ✓	Stage	Robinson	6 10a							1	
6P	12~	3208	Richmond	Decker									
			West Bound	Pull up									
11P	7a	3273	Dooley	A Krahn		2a	3434 1 30p				7/26	1	
7a	3P	3434	Misner	Anderson									
4P	11P	3434	Muldigan	Hardy		11 10P	3410 10 20P				7/26	1	
			Illeg Turned	Pump.									
5 30a	1 30P	3104 ✓	Smith	Thompson	5a					1 20P		1	
4P	12~	3104 ✓	Meehan	Pinckney	5P					12 15a	8/26	1	
			Misc. Pur-										
7a	3P	3419 ✓	Burn	Fish	7a					8 45		1	Transferred to 3418
			Ex. Pur-										
8a	4P	3410 ✓	Bacon	Richardson	8a					4P		1	
													E - 2
													W - 4
													M - 2/8

MID-NIGHT ENGINE SITUATION

A 2352 - 3219 - 3245

B 3200 - 3209 - 3210 - 3221 - 3243 - 3342

C 3202 - 3224 - 3226 - 3285 - 3240 - 3339 - 1596 - 3214

D 3104 - 3208 - 3223 - 3410 - 3418 - 3419 - 3434

(8)

Stored

468-19

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

INSTRUCTIONS: This report to show the time of ARRIVAL and DEPARTURE of all ENGINES and ENGINE CREWS dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — MAYBROOK ENGINE TERMINAL — DATE 8/25 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT	ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'D	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1	Prd 11	3249	1145 R ✓	Daley	Clement	–	2a	2a	X	7			
2	Prd 5	3211		Colburn	Roy	12 –	–	–	✓				Tied up
3	Loff	95		Decker	Wilson	1235 a	–	–	X				" "
4	Prd 4	3216	245 a ✓	Sirois	Purcell	–	530a	530a	X	7			
5	Prd 2	56	✓	Bedford	Pepin	–	6 a	6 a	X	7			
6	Aol	3205		Martin	Miller	345a	–	–	✓				Tied up
7	Hoc	3220		Gilbertson	Greaney	530 a	–	–	✓				" "
8	Loff	205	✓	Buzzard		6 27 a		630a	X	7			Turn
9	Loff	43	✓	Hughes	"	635 a		640 a	X	7			"
10	CB 7	3214	✓	Shepard	Abell	–	830a	8 45 a	X	7		19	Waiting for temp power
11	436	3550	✓	Barker	Dow	–	9 a	9 a	X	7			
12	Mac	3219		Cheney	Gumbo	7 a	–	–	✓				Tied up
13	Enc	3173	✓	Franks	—	7 a	–	–	X	7			Turn & Water
14	951	554		Persson	Smith	7 05 a	–	–					Tied up
15	814	95	✓	Dukes	Wilson		10 22 a	10 25 a	X	7			
16	004	3241	✓	Fuller	Simmons		10 32 a	10 30 a	X	7			
17	Bol	3245		Detrick	Hawkes	8 40 a	–	–	✓	7 8-26			Tied up
18	Enf	73		Purcell	Simms	9 45 a	–	–	X				" "
19	Of 7	3238	✓	Reilly	Houston		12 30 p	12 30 p	X	7			Enroute
20	Dew	458	✓	Howe	–	10 16 a	–	10 24 a	X	7			Turn
21	Pmf	381	✓	Hayes	—	10 31 a	–	10 45 a	X	7			Turn & Water
22	Prd 1	3219		Hagen	Goldsmith	11 35 a	–	–	✓	7 8-26			Tied up
23	4 W	459	✓	Mc Ryan	—	11 50 a	–	11 47 a	X	7			Turn & Water
24	4 W	207	✓	Decker	—	11 52 a	–	11 52 a	X	7			" " "
25	Prd 4	3137	✓	Englehart	Matrazzo	11 57 a	–	—	✓				Tied up
26	Loff	91	✓	Wessel	—	1 50 p	–	1 45 a	X	7			Turn
27	Prd 5	3211	12 05 ✓	Colburn	Roy		1P	2 P	X	7			
28	Enc	3219	✓	Graham	Knowles		3 P	3 8 –	X	7			
29	951	554	✓	Persson	Smith		3 35 p	3 35 p	X	P			
30	4 W	3205	✓	Mayhew	Miller		N 2 p	4 15 p	X	7		25	Offering no Engines
31	Prd 8	3200		Hurley	David	1 25 p	–	–	✓	7 8-26			Tied up.
32	Enc	3193	✓	Steele	–	3 05 p		3 15 p	X	7			Turn & Water
33	Bo 7	3339		Worden	Delaney	3 P	–	–	✓				Tied up
34	Eof	3270		Cotton	Brady	5 12 p	–	–	✓	7 8-26			" "
35	GW	207	✓	Decker	–	3 32 p		3 35 p	X	7			Turn & Water
36	Lor	73	✓	Purcell	Simms	–	6 15 p	6 15 p	X	7			
37	Bo 5	3226		Burns	Moore	5 15 p	–	–	8-26				Tied up
38	Prd 1	3236	6 15 ✓	Bergen	Goldsmith	–	8P	8P	X	7			
39	W X	3207	✓	Wren	Fuoco	6 07 p	–	–	8-26				Tied up
40	Prd 4	3137	7 35 ✓	Englehart	Matrazzo	–	10P	10P	X	7			
41	GW E	57		Winston	Loff	9 35 p	–	–	X				Tied up
42	Enc	3189	✓	Leadbetter	–	9 35 p		9 35 p	X	7			Turn & Water
43	Loff E	207	✓	Matlock	–	9 45 p		9 45 p	X	7			" "
44	Prd 3	3225		Dawson	Chandler	10 45 p	—	—	8/26	8/26			Tied up
45													
46													7 - 26
47													P - 1
48													W - 0
49													
50													(26)
51													
52													

468-20

Form 1053-D

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show **ASSIGNMENT** of all **ENGINES** and **CREWS** used in Switching Service, or performing any yard work not otherwise classified including such **ENGINES** and **CREWS** as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG-RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** Aug 24 1929

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	CONL. CHECK	ENGINE TURNED	REMARKS
			East Bound	Pull out									
11P	7a	3418	F. Holmes	Parson									
7a	3P	3418	Stage	Coons								1	See route of Engr. Engine 3418 and 3419
3P	11P	6419	Doolittle	F. Burnett		11:10P	3418 10:30P						
			East Bound	Kurtz									
12M	2a	3218	Nickerson	Decker						2:15a		—	
7a	3P	3208	Sousa	Robertson	6a							1	
7P	12M	3218	Dickman	Decker									
			West Bound	Pull up.									
11P	7a	3419	Doherty	S. Krukonis		7:15a	3434 12P					1	
7a	3P	3434	Mason	Richardson									
3P	11P	3434	Applegate	Shepard		11:05P	3223 10:30P					1	
			West Bound	Kurtz									
5:30a	12M	3104	Smith	Thompson	5a					12P		1	
4P	12M	3104	Sheehan	Tewksbury	4P					12:00A		1	
			Mass Switches										
7a	3P	3419	Kelly	Houston	7a					3:45P		1	Changed engine to 3421
			Asst. Switches										
8a	4P	3222	Rafky	Akerly	9a					4P		1	
			Ext. Switches										E-2 W-4 M-3 9
11P	7a	3214	F. Burnett	Fisk	11P					7a		1	

MID-NIGHT ENGINE SITUATION.

(9)

A 2852 - 3249 - 3344

B 3209 - 3210 - 3221 - 3243

C 1796 - 3214 - 3216 - 3224 - 3286 3241 - 3342 - 3550 - 3410 - 3211

D 3104 - 3208 - 3223 - 3418 - 3419 - 3434

Stored

468-21

Form 1270-C

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

INSTRUCTIONS: This report to show the time of **ARRIVAL** and **DEPARTURE** of all **ENGINES** and **ENGINE CREWS** dispatched to and from this terminal covering any services except such as are assigned to switching service.

DAILY CONSOLIDATED ENGINE MOVEMENT LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** 8/24 1929

	TRAIN No.	ENGINE No.	TIME ACCEPT		ENGINEER	FIREMAN	TIME ARRIVED	TIME ORDERED	TIME DEP'TD	COAL CHECK	ENGINE TURNED CHECK	DELAY Hr.	DELAY Min.	REMARKS
1.	Pool	3248	12 15 P	✓	Crothers	Goldsmith	—	2 30 A	2 30 A	X				
2	Frt	58		✓	Horn	Lobb	—	1 50 A	1 50 A	X				
3	Frt	301		✓	Jones		12 30 P		12 35 P	X				Turn
4	Frt	90			Tenace	Zuckerbrod	12 45 P	—	—	X				Tied up
5	Local	358		✓	Simon	Lawson	—	4 30 A	4 30 A	X				
6	Agt	3225		✓	Pickard	Ellis	2 35 P	—	—					Tied up
7	Pool	3219	2 45 P	✓	English	Dodson		5 30 A	5 30 A	X				
8	Frt	302		✓	Buzzard		4 35 P		4 45 P	X				Turn + Water
9	No 5	3215			Alger	Gedney	4 45 P	—	—					Tied up
10	082	3348		✓	Wooden	Delaney	—	8 30 A	1 30 P	X				
11	086	3244		✓	Kane	Foley	—	9 A	9 A	X				
12	Frt	306		✓	Hughes		6 40 P		6 50 P	X				Turn
13	Frt	3181		✓	Krouse		6 50 P		7 05 P	X				" + Water
14	951	5564			Duncan		7 P	—	—					Tied up.
15	903	3214			Connelly	Boza		—	—					" "
16	Frt	90		✓	Tenace	Zuckenbuck		10 30 A	10 30 A	X				
17	084	3704		✓	Wynn	Bergen		10 30 A	10 30 A	X				
18	Bo	3247			Glynn	Gambelmeier	8 40 A	—	—					Tied up
19	Pool	3233			Dawson	Chandler	9 A	—	—					" "
20	Frt	459		✓	Owens	—	10 02 A	—	10 A	X				Turn + Water
21	Work	341		✓	Campbell	—	10 40 A	—	11 10 A	X				Post Pocket Mtr
22	Occ	454		✓	Hoffman	—	11 A	—	11 14 A	X				Turn + Water
23	Occ	2150		✓	Dilcher		11 40 A	—	11 35 A					" " "
24	Cf	3410			Boynton	McDonald	11 45 A	—	—					Tied up.
25	NC	3246		✓	Patton	Brady		1 35 P	1 30 P	X				
26	Pool	3314		✓	Hickey	Danks		1 35 P	1 30 P	X				
27	Frt	3229		✓	Campbell	Boza		35	35	X				
28	Pool	3249			Daley	Clements	1 45 P	—	—					Tied up
29	950	5564		✓	Quinlan	Smith		3 35 P	3 30 P	X		P		
30	Occ	3275		✓	Brown	Ellis		4 25 P	4 25 P	X				
31	Occ	899			Fischer	Hamilton	9 45 A	—	—					Tied up.
32	Occ	899		✓	Fischer	Kovits	—	12 15 P	5 45 P	X				
33	Frt	3160		✓	Abbott	—	3 35 P		3 45 P	X				Turn + Water
34	Bo 7	3347			Lawrence	Abbell	4 15 P	—	—					Tied up
35	Occ	215		✓	Decker	—	5 15 P	—	5 30 P	X				Turn + Water
36	Pool	3247		✓	Glynn	Samuelewicz	—	8 25 P	8 30 P	X				
37	Occ	3214		✓	Alger	Gedney	—	9 P	9 P				35	Mr Boothman
38	Frt	3216			Foley	Stevens	6 55 P	—	—					Tied up
39	MH	3241			Fisher	Finnigan	7 05 P	—	—					" "
40	Frt	301		✓	Lott		8 05 P		8 05 P	X				Turn + Water
41	Frt	56			Pickford	Pyne	7 45 P	—	—	X				Tied up
42	Bos	3550			N Barber	Carr	8 05 P	—	—		8 25			" " J-99
43	Pool 3	3235	8 25 P	✓	Dawson	Chandler	—	11 P	11 P	X	✓			P-1
44	Pool	3226			Fiske	Purcell	9 45 P	—	—					W-0 Tied up
45	Frt	3180		✓	Pickford		10 05 P		10 15 P	X				Turn + Water
46	Frt	3061		✓	Jones		11 35 P		11 35 P	X				" Sandwich
47														
48														
49														
50														
51														
52														
53														
54														

(27)

468-22

Form 1672-B

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

INSTRUCTIONS: This report to show ASSIGNMENT of all ENGINES and CREWS used in Switching Service, or performing any yard work not otherwise classified including such ENGINES and CREWS as are furnished for relief of those working in the different classifications.

DAILY CONSOLIDATED SWITCHING SERVICE LOG RECORD — **MAYBROOK ENGINE TERMINAL** — **DATE** Aug 23 192 9

WORKING HOURS From	WORKING HOURS To	ASSIGNED LOCATION OF ENGINES AND CREWS: Engine	Engineer	Fireman	TIME: Dep'd	Arrived	Dep'd	Arrived	Dep'd	Arrived	COAL CHECK	ENGINE TURNED	REMARKS
			East Bound	Pull out									
11P	7a	3418	Stage	Parrow									
7a	3P	3418	Deering	Coons							4P	-	Engine not changed on 3419
3P	11P	3419	Stage	Burnett		11P	12-1					1	
			E B Kunz										
12m	1a	3248	Heckman	Deans						2-52a			
1a	3P	3208	Burr	Robertson	6-20a							1	
6P	12a	3248	Heckman	Dreshem									
			West Bound	Pull up									
11P	7a	3419	D Foley	S Kruum		7-45a	3434 1a					1	
7a	3P	3434	Meiner	Fink									
3P	11P	3434	O Mulligan	Akerly		11-10P	3419 11P					1	
			West Bound	Kunz									
1-30a	1-30P	3223	Smith	Thompson	5-10P					1-55P		1	
4P	12m	3224	Sheehan	Pinckney	4P					12-30a	4/14	1	
			Shine	Switcher									
7a	3P	3419	Kelley	Richardson	7a					3-15P		1	changed on yd from 3418
			Shoop	Switcher									
8a	4P	3214	Ripley	Houston	8a					4P	8/14	1	
			Eng Switcher										
11P	7a	3244	Lewis	Kinney	11P					7a		1	Engine not changed
													4 - 2
													11 - 4
													11 - 3
													9

MID-NIGHT ENGINE SITUATION

A 2352 - 3244 - 3348

B 1596 - 3209 - 3210 - 3231 - 3224 - 3243 -

C 3202 - 3219 - 3229 - 3240 - 3248 - 3342 - 356

D 3104 - 3208 - 3214 - 3223 - 3418 - 3419 - 3434

Stored

(9)

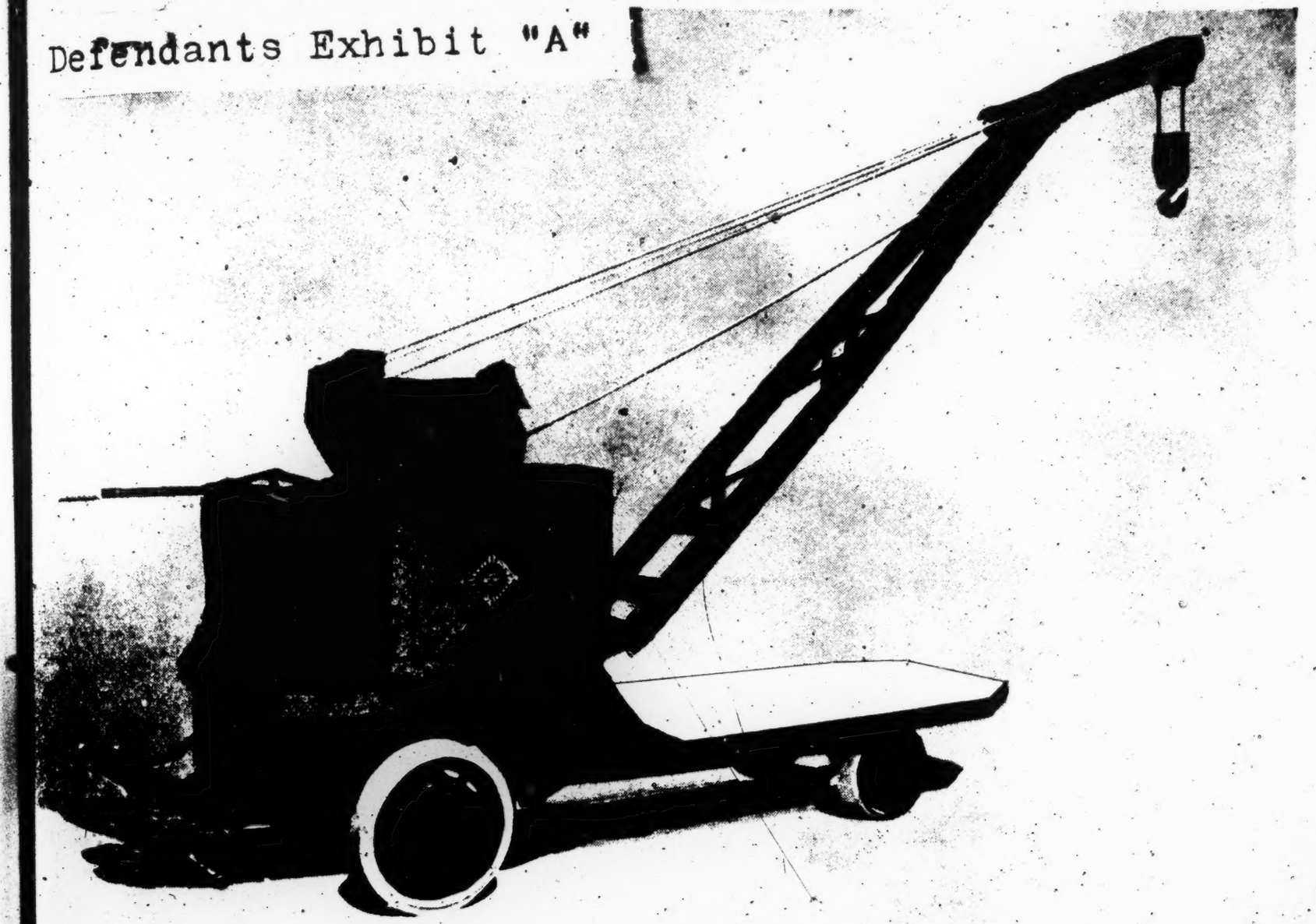
468-23-469

470

Defendant's Exhibit A

(Photo opposite)

Defendants Exhibit "A"

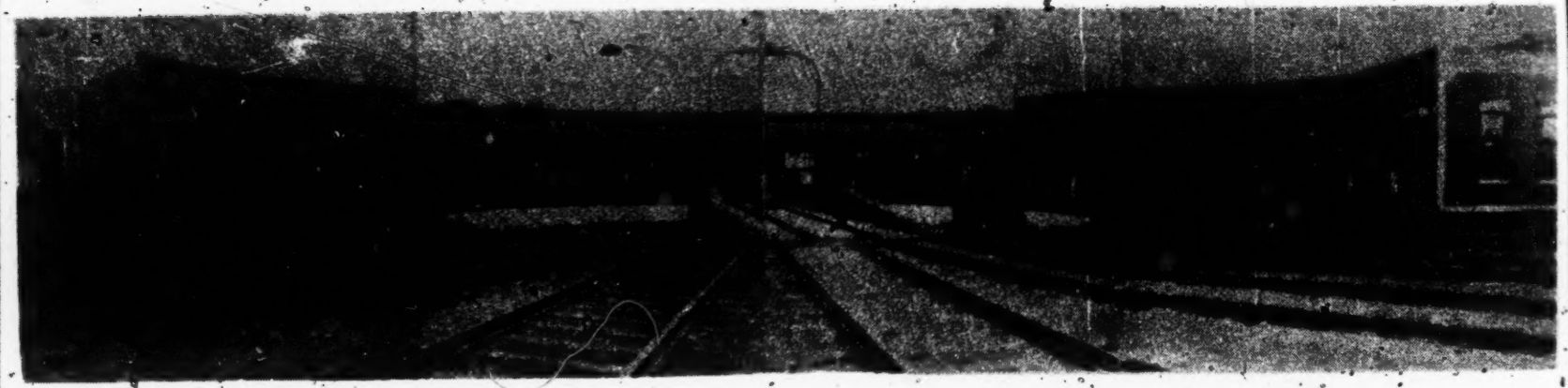


472

Defendant's Exhibit C

(Photo opposite)

DEFENDANTS EXHIBIT "C"



Defendant's Exhibit D

(Photo opposite)

475

476

Defendant's Exhibit F

(Photo opposite)

Marlow N.Y.
Nov 17-27

Wm. Gibbs

Dear Sir

Being I address you
that the Exp 4 Hospital
have moved Thursday of
last week
My Condition has shown
some improvement as I
feel much stronger.
I am at home again
as Indeed you called before
Inviting this invitation
for reply Remain
Sincerely Yours
Leo Byrne

NOV 21

Mr. W.B. Gibbs
Maybrook
N.Y.
c/o G.M.C.A.

478

Defendant's Exhibit G

(Photo opposite)

Walden N.Y.,
Dec. 5. 1929

Mr H. C. Gibbs
Poughkeepsie N.Y.

DEC 6 1929

Dear Mr Gibbs

Acknowledging your letter of Nov. 22nd. I am glad to say I am feeling quite well. My strength has come back again and I am able to get about much better than before.

I had expected to see you before now so I delayed writing you before. However I should like to see you as soon as you can find it convenient to get over this way.

Very truly yours
Clarence Bryan

480

Defendant's Exhibit I

(Photos opposite)

Lefds 84 (i)

SHEET #1 BOILERWASH ENGINE 3221 Aug. 26. 1929.

1. L 1 & 2 Dr. springs are tipped. no
2. 1/8 vertical motion in L top crosshead shoe. yes
3. Rebolt front section L running board ladder yes
4. Steam supply pipe to air pump leaks at pump governor yes
5. Rebolt L #1 tank truck side bearing yes
6. Left #5 grease cellar cover is missing. yes
7. Right #4 grease cellar cover is missing yes
8. R & L soot blower pistons are stuck. no
9. Stencil hydro date on R. main reservoir. no
10. R #2 driver wheel is cutting in sand pipe. yes
11. R. Side rod strikes back sand pipe. yes
12. Furnace casting is working on frame. no
13. Rebolt angle iron back end of cab R.S. gangway. yes
14. Line up R #1 truck brake shoe with wheel tread. yes
15. Condensate return pipe leaks at union under tender. yes
16. Rebolt cab braces R & L side yes
17. L. back flange oiler pipe is plugged. yes
18. Washout air pump yes
19. Drain pipe is gone L.R. Steam end air pump yes
20. Drain pipes gone from water pumps. yes

21. L.S. Rod strikes sand pipes and clamp is all adrift.
22. Trucking shaft casting is working on frame.
23. Refit R & L #1 side rod brasses.
24. L. Front saddle cock is missing.
25. Both drain valves leak in seat.

R. Quick.

54-49-907 0

9-4-29

yellow sheets
yes X "A" Ex
Aug 16/30 TOP Sign

Exceeds
by 21
X "A"
TOP Sign
Aug 16/30

add & (i)

SHEET #1 BOILERWASH ENGINE #3221 Aug. 28, 1929.

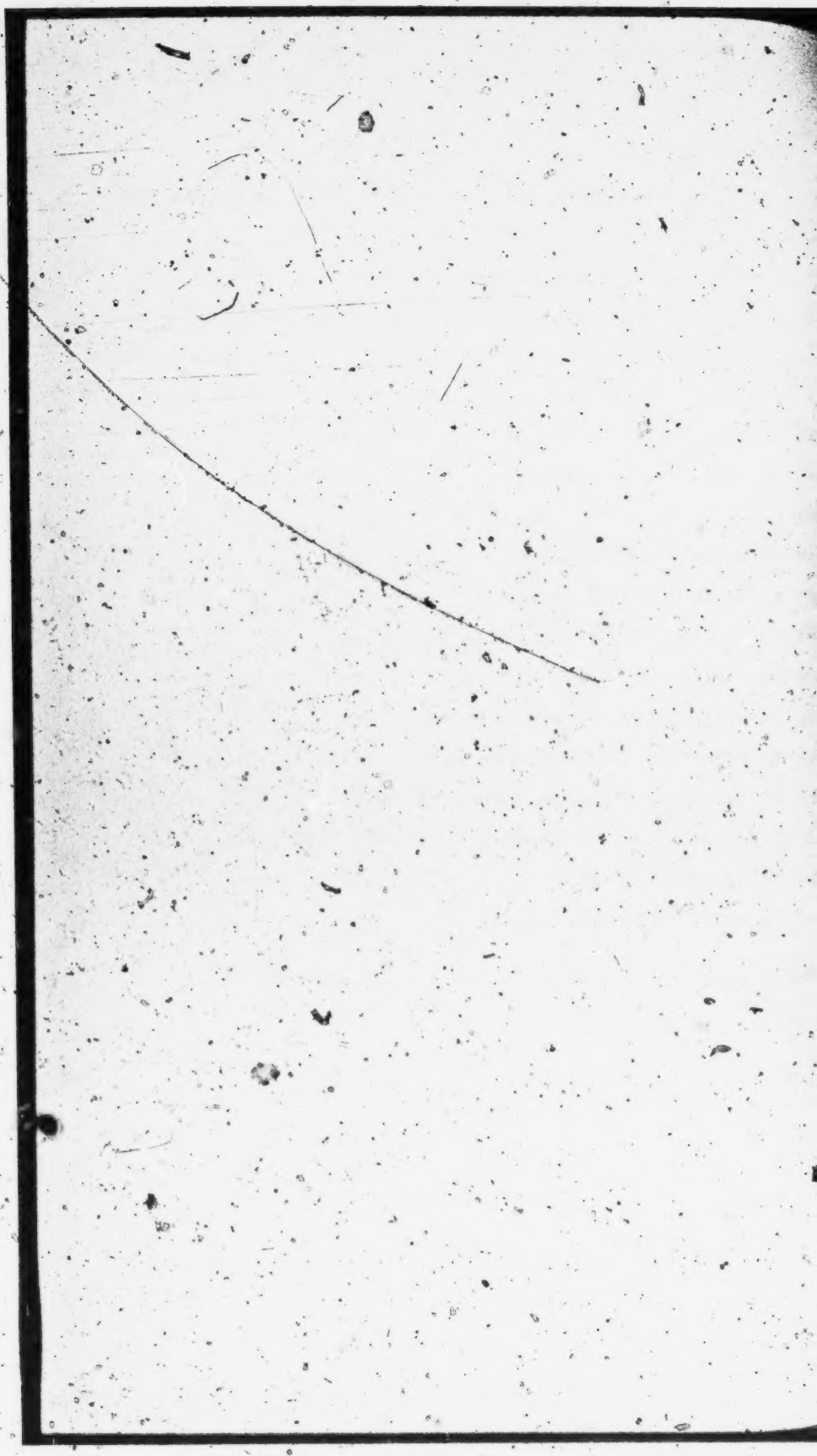
1. R2 crank pin working in wheel. No return made
2. L1 driver spring working in band. No
3. Nuts gone from L main reservoir bracket bolts. yes
4. Bad pound in main driving boxes. yes
5. Take up slack between engine and tender. yes
6. Renew R1 knuckle pin bushing.
7. Renew R2 knuckle pin bushing.
8. Renew R3 knuckle pin bushing.
9. Renew L1 knuckle pin bushing.
10. Renew L2 knuckle pin bushing.
11. Renew L3 knuckle pin bushing.
12. Renew bushing front end R main rod.
13. Renew bushing front end L main rod.
14. Renew R3 crank pin bushing, 3/16 wear.
15. Renew R4 crank pin bushing, loose in rod.
16. Line up R & L1 side rod brasses.
17. Grind in cylinder cocks.
18. Grind in relief valves.

yes

INFORMATION

Clean water guage, guage cock fittings & drain valves.
Test steam guage.
Due for draw bar insp.
Due for 3 mo. stoker insp.
Due for 3 mo. air test.
Due for mo. insp. mech. lubricator.
Due for mo. insp. low water alarm

G. Cook



Offs & (i)

SHEET #1 BOILERWASH ENGINE #3821 August 26, 1929.

1. Clean 28H and 81 small flues. yes
2. Clean combustion chamber and repair lining. yes
3. Clean firebox. yes
4. Renew wall arch, save bricks. yes
5. Clean all plugged grates. yes
6. Bombard 3 syphons. yes
7. Clean hollow bolts in 3 syphons. yes
8. 217 bolts leaking L side sheet, 210 R side. yes
9. 38 bolts L and 4 R side sheet shou... be renewed. yes
10. Apply rigid pins to hold ashpan wings. yes
11. Flexible sleeves and caps leaking L throat. yes
12. Middle plug leaking in throat, clean plug and lightly tap hole. yes
13. Caulk 9 leaking rivets bottom front flue sheet. yes
14. Clean front end yes
15. Tighten bolts in extension stack. yes
16. Apply 2 missing bolts to deflector plates. yes

INFORMATION
Clean out tank yes

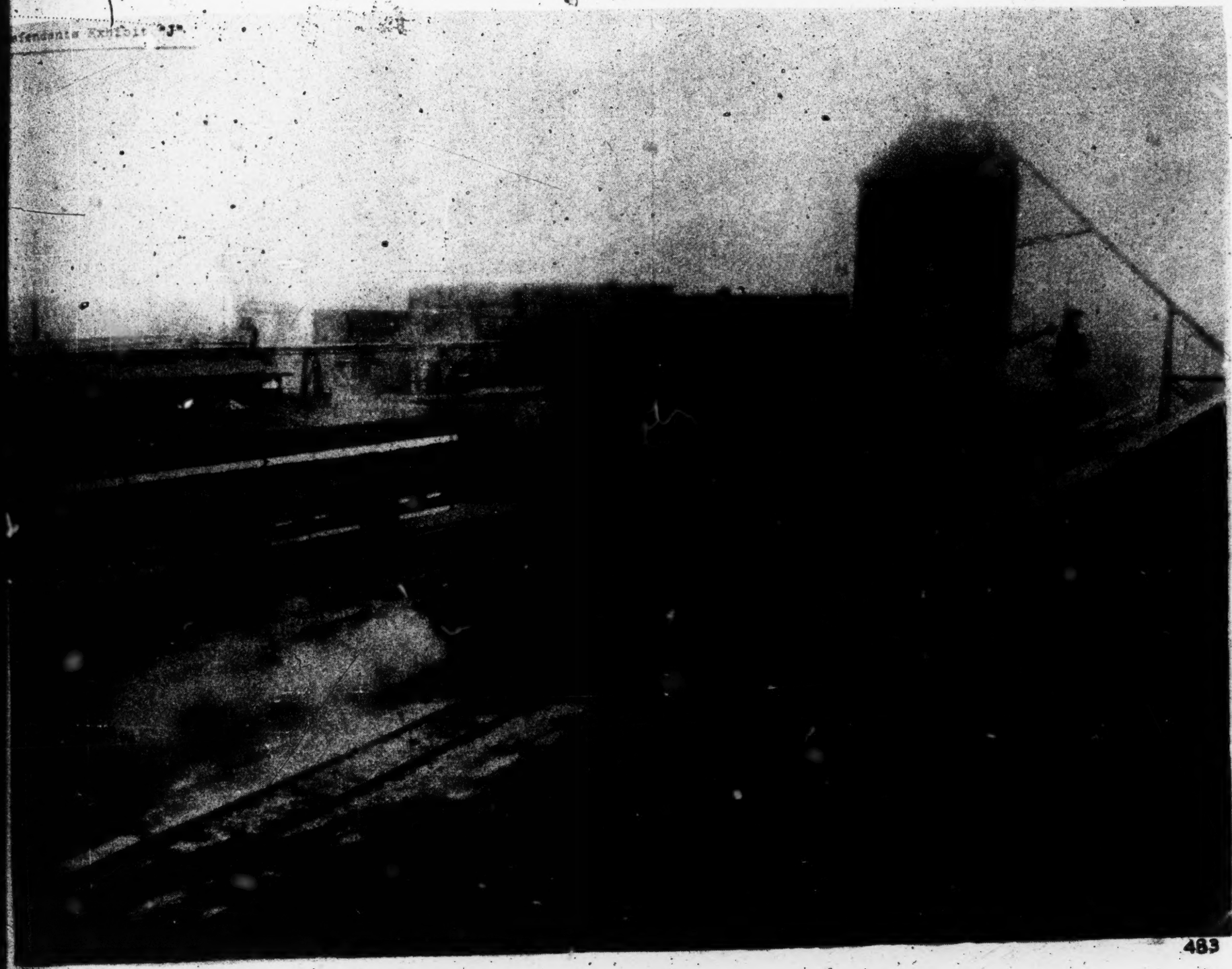
MACH. WORK
Weld filler blocks to top of R & L grate rest support.
L distributor strain out in bottom

G. I. Cassidy

482

Defendant's Exhibit J

(Photos opposite)


Defendants Exhibit No.
483

484

Defendant's Exhibit J

(Photo opposite)

Rfs x 3 Ex July 16/30 7c P.S.I.i

582.011

Dftsm 2

[redacted] INVOLVED [redacted] AUGUST [redacted] 5, 1929.

Left 1 & 2 driver springs tipped.
Let out driver brake, let down wedges 1 & 2 drivers, jack engine up on front end, apply necessary blocking to straighten springs, let engine down, set up wedges 1 & 2 drivers, adjust driver brake.

1/8 Vertical motion left top crosshead.
Remove 5 - 1" bolts, remove shoes from crosshead, melt old babbitt from shoe, apply new babbitt to shoe, plane shoe to guide fit, applied to crosshead, applied 5 bolts.

Rebolt front section L. running board ladder.
Remove old bolts, applied new.

Steam supply pipe to air pump leaks at pump governor.
Tighten coupling nut on governor head.

Rebolt L. #1 tank truck side bearing.

Remove 4 old bolts and applied new bolts.

R#4 grease cellar cover missing.
Make and apply grease cellar cover.

R & L soot blower pistons stuck.
Remove packing from around nozzle tube, loosen tube in fire box, and reapplied packing.

Stencil hydro date on R. main reservoir.

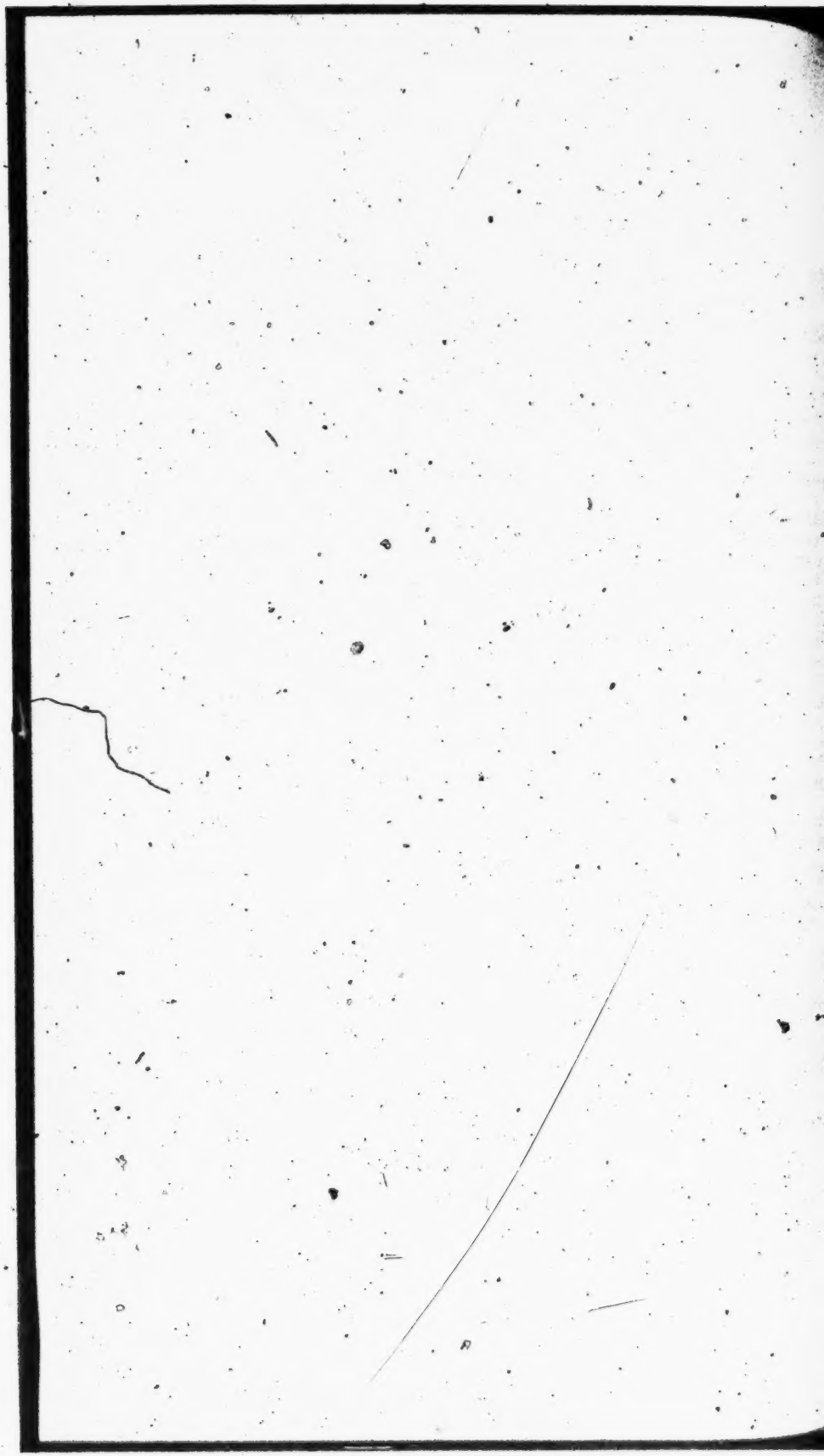
R#2 driving wheel cutting sand pipe.
Sand pipe relocated and clamped in proper position.

R. side rod strikes back sand pipe.
Pipe relocated and clamped in proper position.

Furnace casting working on frame.
No repairs made.

Rebolt angle iron back end of cab, R.S. angle.
Removed all bolts in angle iron and apply new.

Line up R#1 truck brake shoe with wheel tread.
Straightened up beam so brake shoes would line up with tread of wheel.



J-1

Condensate return pipe leaks under tender at union.
Union tightened.

Rebolt cab braces R & L side.
Bolts removed and new bolts applied.

L. back flange oiler pipe is plugged.
Pipe disconnected at oiler, steam hose coupled to pipe and blowed out, coupling reapplied.

Wash out air pump.
All fittings on air end of air compressor removed, intake and discharge hooked up with small reservoir containing water and Okite, intake steam connection removed and steam from house blower line connected on, steam opened on blower line causing pump to operate, drawing solution through [redacted] pump washing out same. When operation completed all connection reapplied.

Drain pipe is gone from L. side steam air pump.
Reapplied new pipe.

Drain pipes gone from water pump.
Reapplied new pipe.

L. side rod strikes sand pipe and clamps adrift.
Pipes relocated in position and properly clamped.

Tumbling shaft working on frame.
Nuts tightened on tumbling shaft bolts.

Refit R & L side rod brasses.
Remove R & L #1 side rod from engine, reduce both ends of brasses in shaper, bore brasses to proper radius on lathe, refit brasses and line to rod and reapply. 6 Hours work.

Left front saddle cock missing.
Apply new saddle cock.

Both drain valves leak in seat.
Valves reseated.

Right #2 crank pin working in wheel.
Inspected and found to be O.K.

J. 2

#1 driving spring working in band.
Let down both #1 wedges, let out front section of driver brakes, jack ending up in front end, remove old spring, apply new one, let engine down, readjust brake and wedges.

gone from L. main reservoir bracket bolts.
New nuts applied.

ound in main driving boxes. (At time wheels were removed it was found that one crown brass was loose in driving box and journal was cut.)
Wedges were let out of #3 driver, brakes were let out front section, wheel #3 driver raised up on wedges, saddles blocked in raised position, shoes, wedges and binders dropped #3 drivers, side rods both sides of engine removed, brake rigging #3 driver removed, including hangers and heads, drivers and boxes lowered in pit, transferred to to rail after engine had been taken out at floor level, driving boxes removed, wheels rolled to whiting Mast Building for journals to be turned on 90° wheel lathe, journal turned, rolled back to engine house for applying to engine, driving boxes cleaned, one box placed on boring mill and rebored, refitted and applied back to journal, other driving box had brass removed, brought back to size by welding, replaned and applied to driving box, rebored to fit journal on boring mill, reapplied to journal, approximately 7 days work for two men.
(The replacing of wheels in order as taken out.)

g up slack between engine and tender.
Drawbar removed, shortened and reapplied.

ving R#1 knuckle pin bushing, renewing R#2 knuckle pin bushing, ing R#3 knuckel pin bushing, renewing L#1 knuckle pin bushing, ing L#2 knuckle pin bushing, renewing L#3 knuckle pin bushing, ing bushings front end right main rod, renewing bushing front . main rod, renewing R#3 crank pin bushings, renewing R#4 k pin bushings.
Rods removed from engine, bushings punched or pressed out of rod, bushings turned in lathe, oil holes drilled, bushgs. pressed back in rod, drilled for spuds, spuds applied, drilled for pins for holding in position, pins applied, rods applied to engine proper location.

in cylinder cocks.
in relief valve.
Remove cap and grind in seat and reapply.

water gauges, gauge cock fittings and drain valves.
Remove from boiler, cleaned, repaired and reapplied.

steam gauge.
Steam gauge removed, placed on dead weight tester, adjusted and reapplied to engine.

J-3

- 4 -

Months stoker inspection.
Piston packing, Piston rod fit in rock, Differential piston, Reversing valve and rod, Was coal removed from tank, Conveyor screw, Conveyor crusher, Conveyor screw shaft coupling, Gear universal joint, Transfer hopper bolts and nuts.

Months air test.
Air pump orifice test, Air gauges, Feed valve Ind. or S.A., Reducing valve.

Inspection of mechanical lubricator.
All checks on lubricator tested by gauge, all couplings tightened, bowl drained out and properly cleaned.

Inspection of low water alarms.
Cap at top of drop pipe removed, drop pipe cleaned, float valve checked, all connection and fittings checked and repairs made where necessary.

BOILER WORK.

Clean 2 superheater and 31 small flues.
Flues blowed with 1/2" blow pipe with compressed air, cleaned combustion chamber and repair lining.
Combustion chamber cleaned, bricks renewed and cemented where necessary.

Renewed wall in arch.
Old bricks taken out where necessary, new bricks applied and cemented in place.

Clean plugged grates.
Holes in grates cleaned out where plugged.

Clean hollow bolts in 3 syphons.
Cleaned by pushing piece of wire through holes.

217 Flexible staybolts leaking L. side sheet and 210 in right side sheet.

(Casing boards, lagging, jacket and piping removed on both sides of fire box, caps removed, hold on tool applied to sleeves, bolts upset in inside with air hammer and a hold on tool on outside bolts, caps reapplied, boiler tested by filling with water, lagging, jacket, piping and running board reapplied. About 4 days for 2 men.)

36 bolts renewed on L. side and 4 on right side sheets.
Piping, lagging, jacket removed, caps removed, bolt burned out of inner sheet, inner sheet retapped, new bolts applied, hold on tool placed on outside and bolt upset in hole on inside and reapplied same as taken out.

9-4

pply rigid pins to hold ashpan wing.
New pins applied.

lexible sleeves and caps leaking L. throat sheet.
Caps tightened and sleeves caulked.

iddle plug leaking in throat sheet.
Plug cleaned and hole lightly tapped.

Rivets leaking in front flue sheet.
Caulked.

lean front end.

ighten bolts in extension stack.

pply two missing bolts to deflector plates.

lean out tank.
Interior tank cleaned and flushed out with hose.

eld filler block to top R & L grate rest support.

. distributor out in bottom.
New distributor applied to stoker elbow inside firebox.

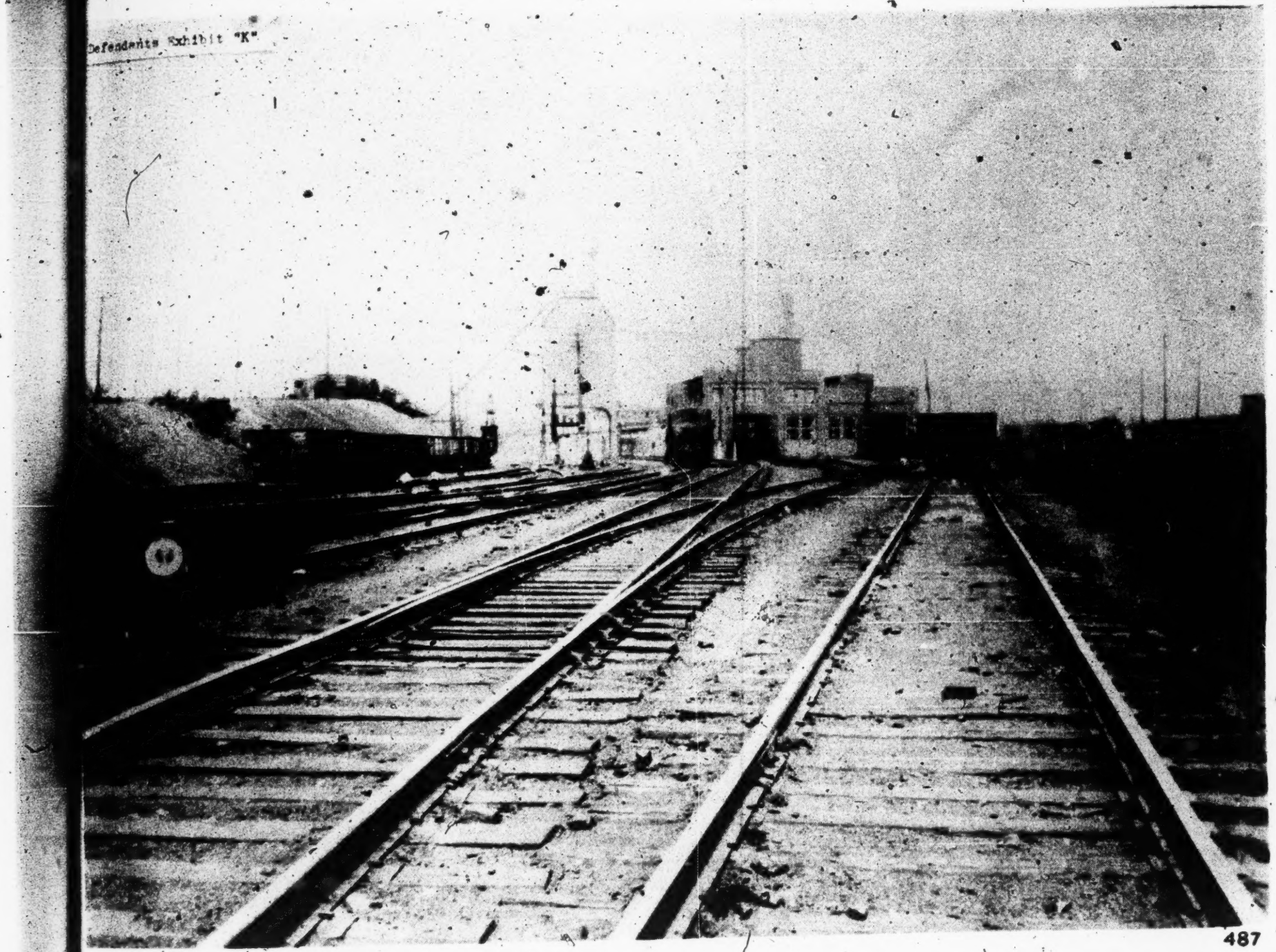
ABOR
ncludes man hours worked in performing above operations and handling parts requiring repairs by other departments of the shop to nd from engine, also material and tools handled by employees irectly involved making repairs to above locomotive. Amount $306.02 man ours.

General Foreman.

Defendant's Exhibit K

(Photo opposite)

Defendants Exhibit "K"

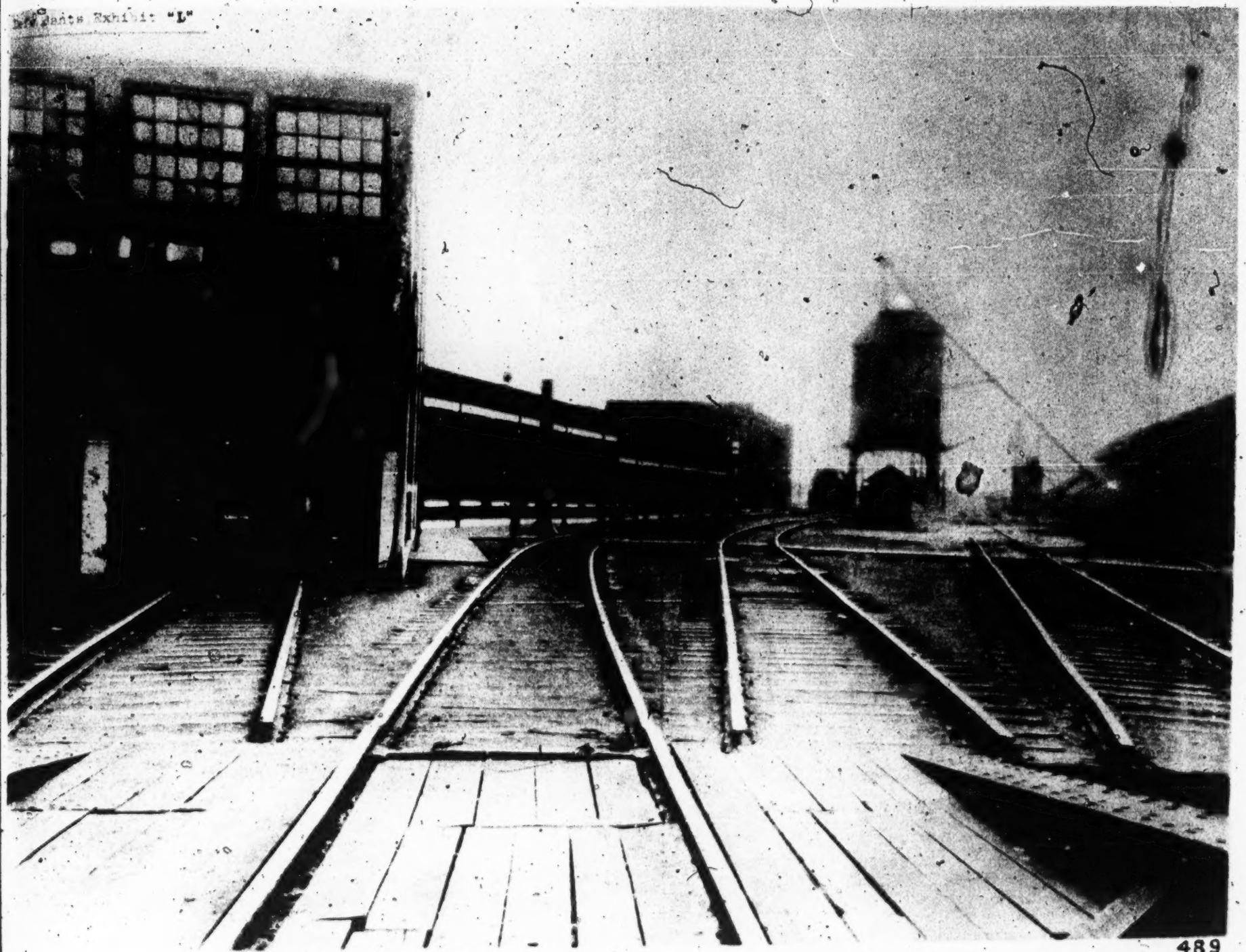


487

Defendant's Exhibit L

(Photo opposite)

Defendants Exhibit "L"



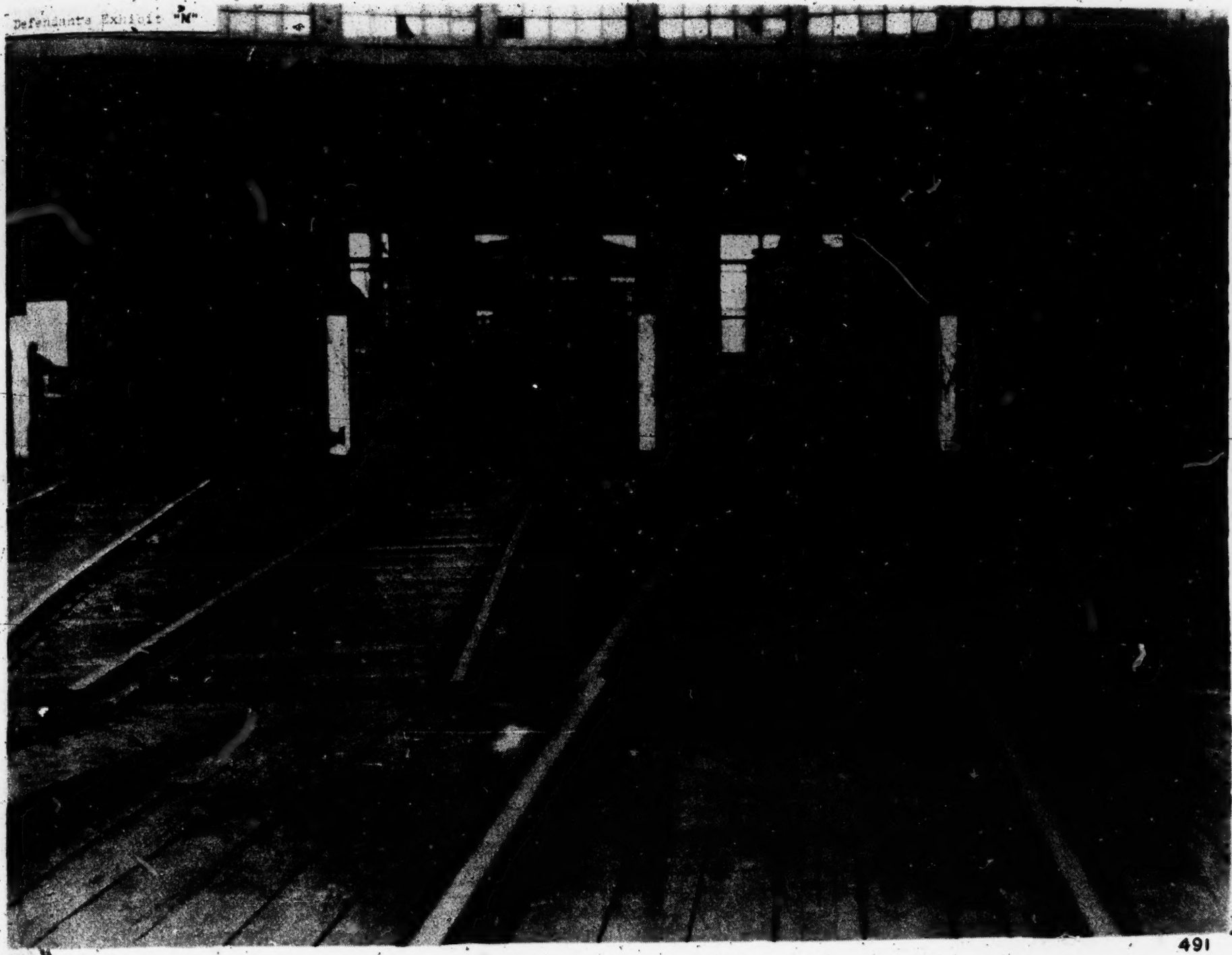
489

490

Defendant's Exhibit M

(Photo opposite)

Defendants Exhibit "N"



491

492

Defendant's Exhibit N

(Photo opposite)

Defendant's Exhibit O

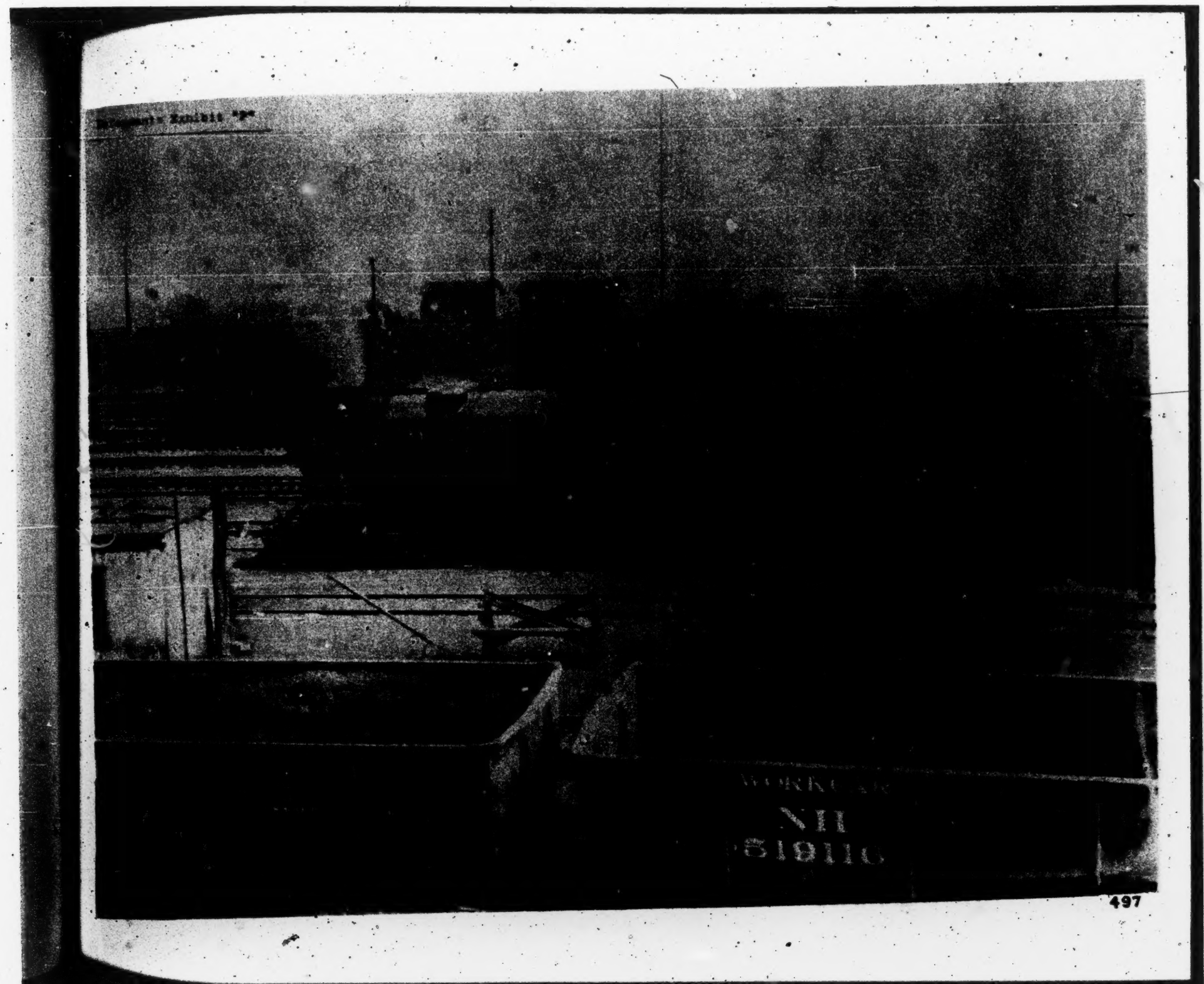
(Photo opposite)

Defendant's Exhibit "O"
495

496

Defendant's Exhibit P

(Photo opposite)


Document Exhibit "F"
WORKCAMP
NII
619116

[fol. 498] IN SUPREME COURT OF NEW YORK

STIPULATION SETTLING CASE

It is hereby stipulated that the foregoing case contains all the evidence given on the trial of this action, and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated December —, 1930.

Thomas J. O'Neill, Attorney for Plaintiff-Respondent, 1 Court Street, White Plains, New York. John M. Gibbons, Attorney for Defendant-Appellant, Room 3843 Grand Central Terminal, New York City.

IN SUPREME COURT OF NEW YORK

ORDER SETTLING CASE

The foregoing case on appeal, containing all the evidence given on the trial of this action, is hereby settled and ordered on file, pursuant to the foregoing stipulation.

Date December —, 1930.

John E. Mack, Justice Supreme Court.

[fol. 499] IN SUPREME COURT OF NEW YORK

STIPULATION WAIVING CERTIFICATION

It is hereby stipulated, pursuant to Section 170 of the Civil Practice Act, that the foregoing are true copies of the notice of appeal, judgment roll and case and exceptions herein, now on file in the office of the Clerk of the County of Putnam; and certification thereof, pursuant to Section 616 of the Civil Practice Act, is hereby waived.

And it is further stipulated that a copy of the printed case on appeal herein be filed in lieu of the engrossed copy required by the Rules.

Dated December —, 1930.

Thomas J. O'Neill, Attorney for Plaintiff-Respondent. John M. Gibbons, Attorney for Defendant-Appellant.

IN SUPREME COURT OF NEW YORK

ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to Section 616 of the Civil Practice Act, it is

Ordered that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, Second Judicial Department.

Dated December —, 1930.

John E. Mack, Justice Supreme Court.

[fol. 500] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

AFFIDAVIT OF NO OPINION

CITY AND COUNTY OF NEW YORK, ss:

Frederick J. Rock, being duly sworn, deposes and says that he is employed in the office of John M. Gibbons, the attorney for the defendant herein, and is familiar with all the proceedings heretofore had herein.

Deponent further states that this case was tried before Hon. John E. Mack and a jury at Carmel, New York, on September 24th, October 2nd, 3rd, 9th and 10th, 1930, and resulted in a verdict for the plaintiff in the sum of $60,000. That upon the rendition of said verdict and immediately thereafter a motion was duly made on behalf of the defendant to set aside the said verdict and for a new trial on the ground that the said verdict was contrary to law, contrary to the evidence and on all the grounds specified in Section 549 of the Civil Practice Act, except in adequacy. That the said motion was denied by Mr. Justice Mack, and an order therein entered in the office of the Clerk of the County of Putnam on the 28th day of October, 1930. That Mr. Justice Mack in denying said motion did not hand down any opinion.

Frederick J. Rock.

Sworn to before me this 30th day of October, 1930.

Leo P. Sifferlen, Notary Public, New York County.

(Seal.)

[fol. 501] IN SUPREME COURT OF NEW YORK, PUTNAM COUNTY

CLARENCE BEZUE, Plaintiff-Respondent,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant-Appellant

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS: Please take notice that the above named defendant hereby appeals to the Court of Appeals from the judgment in the above entitled action in favor of the plaintiff and against the defendant, entered in the office of the Clerk of the County of Putnam on the 31st day of March, 1931, which judgment reduced and modified the verdict in a judgment in said action entered in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, from the sum of Sixty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($60,222.50) to Fifty Thousand Dollars ($50,000), and reduced the amount of said judgment of October 20th, 1930, to Fifty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($50,222.50), and affirmed said judgment of October 20th, 1930, as thus modified, and also affirmed an order denying the motion for a new trial, which order was duly entered in the office of the Clerk of the County of Putnam on the 28th day of Octo-
[fol. 502] ber, 1930; and the defendant appeals from the whole and each and every part of said judgment of affirmance.

Please take further notice that the above named defendant also appeals to the Court of Appeals from the order of the Appellate Division dated March 20th, 1931, certified copy of which was filed in the office of the Clerk of the County of Putnam on March 31st, 1931, which order modifies and reduces the judgment in amount of Sixty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($60,222.50), entered in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, by reducing the verdict therein to the sum of Fifty Thousand Dollars ($50,000), the judgment as so modified being af-

firmed; and the defendant appeals from the whole and each and every part of said order.

Dated New York, April 16th, 1931.

Yours, &c., John M. Gibbons, Attorney for Defendant-Appellant. Office and Post Office address: Room 3843 Grand Central Terminal, New York City.

To Thomas J. O'Neill, Esq., Attorney for Plaintiff-Respondent, 405 Lexington Avenue, New York City; Edward S. Agor, Esq., County Clerk, Putnam County, Carmel, New York.

[fol. 503] In Supreme Court of New York, Putnam County

Clarence Bezue, Plaintiff,

against

New York, New Haven and Hartford Railroad Company, Defendant

Judgment Entered on the Remittitur of the Appellate Division, Second Department, March 31, 1931

Judgment of Affirmance

The defendant, New York, New Haven & Hartford Railroad Company, having appealed to the Appellate Division of the Supreme Court, Second Department, from the judgment of the Supreme Court, Putnam County, entered in the Country Clerk's Office of Putnam County on the 20th day of October, 1930, in favor of the plaintiff and against the defendant for the sum of $60,222.50, and from the order denying the defendant's motion for a new trial, entered in the office of the Clerk of Putnam County on the 27th day of October, 1930, and said appeal having been duly argued by counsel for the respective parties, and the said Appellate Division, Second Department, having thereafter and on the 20th day of March, 1931, rendered its decision, by which the judgment and order were reversed and a new trial ordered with costs to abide the event, unless the plaintiff stipulate within ten days from the serv-

ice of a copy of the order herein to reduce the verdict to the sum of $50,000, in which event the judgment as so [fol. 504] modified and the order are unanimously affirmed without costs, and the plaintiff having on the 31st day of December, 1930, duly stipulated and consented to the reduction of the said verdict to the sum of $50,000, and the remittitur of the Appellate Division, Second Department, having filed in this office,

Now, on motion of Thomas J. O'Neill, attorney for the plaintiff herein, it is

Ordered and adjudged that the judgment in favor of the plaintiff and against the defendant, entered in the office of the Clerk of Putnam County on the 20th day of October, 1930, be and the same hereby is modified and reduced to the sum of $50,222.50, and that the judgment as so modified and the order appealed from are in all things unanimously affirmed without costs, and that the plaintiff have execution issue therefor.

Enter.

Ed. S. Ayor, Clerk.

[fol. 505] In Supreme Court of New York, Appellate Division

Present. Hon. Edward Lazansky, Presiding Justice; Hon. J. Addison Young, Hon. William F. Hagarty, Hon. Townsend Scudder, Hon. Arthur S. Tompkins, Justices.

Clarence Bezue, Respondent,

vs.

The New York, New Haven and Hartford Railroad Company (Appeal No. 2), Appellant.

Order of Reversal on Appeal from Judgment—Mar. 20, 1931

The above named The New York, New Haven and Hartford Railroad Company, the defendant in this action, having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court, entered in the office of the Clerk of the County of Putnam, on the

20th day of October, 1930, and from an order made by said [fol. 506] Court and entered in said Clerk's office on the 28th day of October, 1930, denying defendant's motion to set aside the verdict and for a new trial herein, and the said appeal having been argued by Mr. Edward R. Brumley, of counsel for the appellant, and argued by Mr. Thomas J. O'Neill, of counsel for the respondent, and due deliberation having been had thereon.

It is Ordered and Adjudged that the judgment and order so appealed from be and the same hereby are unanimously reversed upon the law and the facts and a new trial granted, costs to abide the event, unless plaintiff, within ten days from service of a copy of the order herein, stipulates to reduce the verdict to the sum of $50,000; in which event the judgment as so modified and the order are unanimously affirmed, without costs.

Enter.

E. L., P. J.

[fol. 507] In Supreme Court of New York, Putnam County

[Title omitted]

Stipulation and Consent to Reduction of Verdict and Judgment

I, Clarence Bezue, hereby stipulate and consent to reduce the verdict to the sum of $50,000, and stipulate and consent to the reduction of the judgment for $60,222.50, entered in the office of the Clerk of the County of Putnam on October 20th, 1930, to the sum of $50,222.50.

Dated Walden, New York, March 26, 1931.

Clarence Bezue, Plaintiff.

Duly sworn to by Clarence Bezue. Jurat omitted in printing.

[fol. 508] In Supreme Court of New York, Appellate Division

155 E

Clarence Bezue, Respondent,

v.

The New York, New Haven and Hartford Railroad Company, Appellant

Appeal No. 2

Opinion

Judgment and order reversed upon the law and the facts and a new trial granted, costs to abide the event, unless plaintiff, within ten days from service of a copy of the order herein, stipulate to reduce the verdict to the sum of $50,000; in which event the judgment as so modified and the order are unanimously affirmed, without costs.

Lazansky, P. J.

Young, Hagarty, Scudder and Tompkins, JJ., concur.

In Court of Appeals of New York

Clarence Bezue, Plaintiff-Respondent,

against

The New York, New Haven and Hartford Railroad Company, Defendant-Appellant

Affidavit of No Opinion

State of New York,
City and County of New York, ss:

Frederick J. Rock, being duly sworn, deposes and says that he is an attorney and counsellor-at-law, and employed in the office of John M. Gibbons, the attorney for the de- [fol. 509] fendant herein, and is thoroughly familiar with all the facts pertaining thereto. That in making the order

of modification on appeal from judgment herein appealed from, the Appellate Division, Second Department, handed down no opinion, except a short memorandum reading as follows:

"Judgment and order reversed upon the law and the facts and a new trial granted, costs to abide the event, unless plaintiff, within ten days from service of a copy of the order herein, stipulate to reduce the verdict to the sum of $50,000; in which event the judgment as so modified and the order are unanimously affirmed, without costs. Lazansky, P. J., Young, Hagarty, Scudder and Tompkins, JJ., concur."

Frederick J. Rock.

Sworn to before me this 15th day of April, 1931. Adolph W. Antelmann, Notary Public, Bronx County, No. 35, Register No. 6A33. Cert. filed in N. Y. Co. No. 95, Reg. No. 3A68. Cert. filed in Westchester County. Term expires March 30, 1933. (Seal.)

[fol. 510] In Supreme Court of New York

Stipulation Settling Case

It is hereby stipulated that the foregoing case contains all the evidence given on the trial of this action and the complete record before the Appellate Division, Second Judicial Department, and that the same be settled.

Dated April 27, 1931.

Thomas J. O'Neill, Attorney for Plaintiff-Respondent. John M. Gibbons, Attorney for Defendant-Appellant.

In Supreme Court of New York

Stipulation Waiving Certification

It is hereby stipulated, pursuant to Section 170 of the Civil Practice Act, that the foregoing are true copies of the notice of appeal, judgment roll and case and exceptions

herein, now on file in the office of the Clerk of the County of Putnam, and certification thereof, pursuant to section 616 of the Civil Practice Act, is hereby waived; and it is further stipulated that a copy of the printed case on appeal herein be filed in lieu of the engrossed copy required by the Rules.

Dated April 27, 1931.

Thomas J. O'Neill, Attorney for Plaintiff-Respondent. John M. Gibbons, Attorney for Defendant-Appellant.

[fol. 511] IN COURT OF APPEALS OF NEW YORK

No. 272

CLARENCE BEZUE, Plaintiff-Respondent,

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO., Defendant-Appellant

H. K. C., Ch.J., P. L. O.

Appeal by the defendant from a judgment of the Supreme Court, Appellate Division, Second Department, which modified a judgment entered upon a verdict of a jury in favor of the plaintiff for $60,000.00 by reducing it to $50,000.00 and affirming it for that amount.

John M. Gibbons, attorney for appellant; E. R. Brumley, of counsel.

Thomas J. O'Neill, attorney for respondent.

OPINION

HUBBS, J.:

This is an action to recover damages growing out of injuries received by the respondent while in the service of the appellant. The action is under the Federal Employers Liability Act (Act of April 22, 1908, 35 Stat. at L. 65 C. 149 as amended by Act of April 5, 1910, 36 Stat. at L. 291 C. 143).

The respondent at the time in question was employed by the appellant as a member of an unskilled labor gang at [fol. 512] appellant's maintenance round house and engine terminal at Maybrook, N. Y. Part of the time he operated a small portable electric truck with a crane. He also assisted in general maintenance work, oiled locomotives, filled grease boxes, assisted in adjusting couplers, brake shoes, pressure tanks, rolling wheels and in all other work required of an unskilled laborer in and about the round house. He also cleaned windows, operated coal pockets, dumped coal and did whatever work of that nature he was called upon to do. Some of the jobs which he was directed to do would take only a few minutes, others a few hours. He was continually moved from one kind of work to another. He did whatever he was directed to do by his superior.

Nearly all locomotives which ran in and out of the round house were used exclusively in interstate commerce although a few locomotives which were not so used were brought in there for minor repairs. All locomotives underwent a boiler wash every thirty days. That work was done at the round house and at the same time they were inspected and minor repairs made. The round house was not used for the purpose of making extensive repairs.

On August 23, 1929, locomotive No. 3221 arrived at the round house. It was a locomotive used exclusively in interstate commerce. Between the date of its arrival and September 2nd its boiler was washed and certain repairs made on it. In doing that work it was necessary to remove two driving wheels. On the latter date, the respondent was called upon to help move the wheels by hand from a certain [fol. 513] lathe to the engine. While engaged with other workmen in rolling one of the wheels, he was injured by being caught under the wheel which tipped over while being moved. He had been engaged in that particular work, part of the time, for about two hours before he was injured.

The sole question presented upon this appeal is—was the respondent engaged in interstate commerce at the time and place of the accident or in work so closely related to it as to be practically a part of it?

The round house is an essential part of the railroad's system, necessary in the operation of the road, and in carrying on interstate commerce. It is part of the plant required in keeping the locomotives in repair and in a proper

condition to operate successfully in interstate commerce. The fact that some work is done on locomotives engaged in intrastate commerce, does not deprive it of its character as an essential instrumentality of interstate commerce any more than the running of intrastate trains over the road bed of the appellant's road deprives it of its character as a track used in interstate commerce.

The respondent was engaged in a plant service. He worked indiscriminately upon engines engaged in interstate or intrastate commerce. He also did work necessary to keep the plant in proper order and condition to carry on the work. Employees engaged in keeping tracks, bridges, ash pits and boilers which are used in both kinds of commerce in proper order and condition to maintain their effectiveness are engaged in each of them, are covered by the act and it matters not that at the moment of injury [fol. 514] an employee was temporarily at work on a locomotive or some other instrumentality not engaged at the time in interstate commerce.

Erie R. R. Co. v. Collins, 253 U. S. 77;
Pedersen v. D., L. & W. R. R., 229 U. S. 146;
Grybowski v. Erie R. R. Co., 88 N. J. L. 1, Aff'd 89 id. 361;
Illonardo v. Erie R. R. Co., 103 N. J. L. 4, Aff'd 103 id. 698;
Lindstrom v. N. Y. C. R. R., 186 App. Div. 29, Aff'd 230 N. Y. 551;
Salvo v. N. Y. C. R. R., 216 App. Div. 592;
Okleski v. R. R. Co., 318 Mo. 79, certiorari denied 277 U. S. 587.

In Shanks v. D.; L. & W. R. R., 239 U. S. 556, the Supreme Court stated the general rule for determining when an employee is engaged in interstate commerce within the meaning of the act:

"Having in mind the nature and usual course of the business to which the act relates and the evident purpose of Congress in adopting the act, we think it speaks of interstate commerce, not in a technical legal sense, but in a practical one better suited to the occasion * * * and that the true test of employment in such commerce in the sense intended is, was the employee at the time of the in-

jury engaged in interstate transportation or in work so closely related to it as to be practically a part of it."

[fol. 515] Within the principle stated the respondent was at the time of his injury

"engaged in interstate transportation or in work so closely related to it as to be practically a part of it."

N. Y. C. R. R. Co. v. Marcone, 281 U. S. 345;
Erie R. R. Co. v. Szary, 253 U. S. 86;
Matter of Guida, 183 App. Div. 822, Aff'd 224 N. Y. 712;
Hiser v. Doris, 234 N. Y. 300.

Unless the act is given practical construction the condition of injured unskilled employees engaged in work which changes at short intervals would be extremely unsatisfactory. At one moment such an employee might be engaged in working on a locomotive engaged in interstate transportation and immediately thereafter employed on one engaged in intrastate transportation.

If required to determine, in case of injury, whether to proceed under the Federal Act or the State Workmen's Compensation Act, there would be danger that when he proceeded under one he would lose his right under the other and is mistaken in proceeding under one act, all rights to recover for the injury might be lost, at the time to proceed under the other might meanwhile have expired.

"A rather abrupt transition it would seem at first [fol. 516] blush."

Erie R. R. Co. v. Collins, supra.

In that case the Court explained and distinguished the cases in the United States Supreme Court which have been cited as sustaining the contention that the nature of the work being done at the very time of the accident is the determining factor.

We have reached the conclusion that the maintenance round house was a necessary part of the appellant's plant, essential in its business of carrying on interstate commerce, that the maintenance and operation of the round house was in aid of such commerce and that the work of

the respondent was so closely related with intertsate transportation that it constituted a part of it.

We find it unnecessary to determine whether at the time of the accident the locomotive being repaired had been so withdrawn from service that it was not in use in interstate commerce.

There was no conflict in the evidence in regard to the services performed by the respondent. The Trial Court, therefore, properly decided as a matter of law that the respondent was covered by the act.

The judgment should be affirmed with costs.

[fol. 517] In Court of Appeals of New York

No. 272

Clarence Bezue, Respondent,

against

The New York, New Haven and Hartford Railroad Company, Appellant

H. K. C., Ch. J., P. L. O.

Dissenting Opinion

O'Brien, J. (dissenting):

For twelve days this locomotive, with driving wheels and other parts removed to the machine shop and undergoing thirty-two items of repairs, stood idle in the round house. During that time it remained a useless thing, incapable of allocation to commerce of any kind. It was completely removed from service and, therefore, under the decisions of the Supreme Court, no longer and instrument of interstate commerce. An engine laid up for repairs for a duration no longer than three days ceases to be such an instrument. Its character is not affected by the fact that on the day before its cessation from actual use it was employed in commerce between the states and that immediately upon its restoration it might again be engaged in the same traffic. (Minn. & St. L. R. R. Co. v. Winters, 242

U. S. 353). Equipment, accustomed to be used exclusively in such operations, when partially dismantled for repairs over a considerable length of time, is deemed to be withdrawn from service (Ind. Com. v. Davis, 259 U. S. 182). This Court's opinion in the case before us does not other- [fol. 518] wise hold. The majority deem its unnecessary to determine the question.

Since the object upon which plaintiff was engaged at the time of his injury did not then constitute a medium through which any kind of commerce could be conducted, difficulty inseparable as it seems to me, is encountered in allotting to him a place in transactions affecting interstate commerce. The character of his employment on other occasions is immaterial, says the Supreme Court, and the true test relates to the nature of service rendered by him when his injury is suffered (Ill. Cent. R. R. Co. v. Behrens, 233 U. S. 473, 478; Shanks v. D. L. & W. R. R. Co., 239 U. S. 556, 558). The general rule as announced in the Shanks case is quoted in this Court's opinion on this appeal but its application by the Supreme Court in that case now requires, in my view, a similar application by us. Shanks was a mechanic, generally but not exclusively, employed in the repair of locomotives used in interstate transportation. At the time of his injury he was engaged in relocating a shaft in the shop which transmitted power to machinery for repairing engines used in interstate transportation. The Supreme Court, affirming the judgment of this Court, decided that his work was too remote from interstate transportation to be practically a part of it. In the present case, plaintiff for two hours had worked on the driving wheels of a locomotive which for twelve days was entirely separated from any activity in respect to transportation. Not only had these parts been removed from the engine and the round house but they had been taken to the "back shop" and had not yet been again attached to the engine. The [fol. 519] rule in the Shanks case has been applied by this Court in Conklin v. N. Y. Cent. R. R. Co., 238 N. Y., 570, and Matter of Marini v. Erie R. R. Co., 253 N. Y. 539. Such decisions as Erie R. R. Co. v. Collins, 253 U. S. 77, and Erie R. R. Co. v. Szary, 253 U. S. 86, cited in the prevailing opinion, are readily distinguishable. There the workmen at the time of their injuries were employed in duties

directly affecting both interstate and intrastate transportation. Here plaintiff's work had no relation to commerce of either kind. His energies were directed toward an object which was not an instrument of commerce. Neither can I see the application to these facts of the principle controlling the decision in N. Y. Cent. R. R. Co. v. Marcone, 281 U. S. 345, a case cited in the prevailing opinion. The engine in that case, unlike the one now under consideration, had not been withdrawn from service. It had been temporarily run into the round house and no repairs were made upon it. Simply it was oiled and the deceased had completed his work on it only a few minutes before his death.

[fol. 520] IN COURT OF APPEALS OF NEW YORK

CLARENCE BEZUE, Respondent,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Appellant

REMITTITUR—June 3, 1931

Be it remembered, That on the 28th day of April, in the year of our Lord one thousand nine hundred and thirty-one, The New York, New Haven and Hartford Railroad Company, the appellant in this cause, came here unto the Court of Appeals, by John M. Gibbons, its attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the Second Judicial Depart-
[fol. 521] ment, and Clarence Bezue, the respondent in said cause, afterwards appeared in said Court of Appeals by Thomas J. O'Neill, his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. E. R. Brumley, of counsel for the appellant, and by Mr. Thomas J. O'Neill, of counsel for the respondent, and after due deliberation had thereon, did or-

der and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court thereto to be proceeded upon according to law.

Therefore, It is considered that the said judgment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

[fol. 522] COURT OF APPEALS,
Clerk's Office, ss:

Albany, June 3, 1931.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached hereto.

Wm. J. Armstrong, Clerk. (Seal.)

IN SUPREME COURT OF NEW YORK

CLARENCE BEZUE, Plaintiff,

against

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant

ORDER ON REMITTITUR OF THE COURT OF APPEALS—June 9, 1931

The defendant, The New York, New Haven and Hartford Railroad Company having appealed to the Court of Appeals of the State of New York, from the judgment and order of the Appellate Division of the Supreme Court, Sec-

[fol. 523] ond Department, unanimously affirming a judgment in favor of the plaintiff and against the defendant for the sum of $50,222.50 entered in the office of the Clerk of the County of Putnam, on the 20th day of October, 1930, and said appeal having thereafter been argued in the Court of Appeals by Mr. E. R. Brumley, of counsel for the defendant and appellant, and by Mr. Thomas J. O'Neill, attorney and counsel for the plaintiff and respondent, and the said Court of Appeals having thereafter ordered and adjudged that the judgment of the Appellate Division of the Supreme Court be affirmed with costs, and that the record in the said Court of Appeals and the proceedings had in said Court be remitted to the Supreme Court to be proceeded upon according to law, and the plaintiff's costs and disbursements upon the appeal to the said Court of Appeals having been duly taxed in the sum of $121.13,

Now upon filing the remittitur of the said Court of Appeals, and on motion of Thomas J. O'Neill, attorney for the plaintiff herein, it is

Ordered that the judgment and order of the Court of Appeals, affirming the judgment in favor of the plaintiff and against the defendant for the sum of $50,222.50 entered in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, be and the same hereby is made the judgment and order of this Court, and that the plaintiff recover from the defendant the costs of the appeal to the Court of Appeals taxed in the sum of $121.13, and that the plaintiff have execution issued therefor.

Enter.

Abraham Witschief, J. S. C.

[fol. 524] In Supreme Court of New York, Putnam County

Clarence Bezue, Plaintiff,

against

The New York, New Haven and Hartford Railroad Company, Defendant

Judgment on Remittitur of the Court of Appeals

The defendant, The New York, New Haven & Hartford Railroad Company, having appealed to the Court of Ap-

peals of the State of New York, from the judgment and order of the Appellate Division of the Supreme Court, Second Department, unanimously affirming a judgment in favor of the plaintiff and against the defendant for the sum of $50,222.50, entered in the office of the Clerk of the County of Putnam, on the 20th day of October, 1930, and said appeal having thereafter been argued in the Court of Appeals by Mr. E. R. Brumley, of counsel for the defendant and appellant, and by Mr. Thomas J. O'Neill, attorney and counsel for the plaintiff and respondent, and the said Court of Appeals having thereafter ordered and adjudged that the judgment of the Appellate Division of the Supreme Court be affirmed with costs, and that the record in the said Court of Appeals and the proceedings had in said Court be remitted to the Supreme Court to be proceeded upon according to law, and the judgment and order of the Court of [fol. 525] Appeals having been made the judgment and order of this Court, and the plaintiff's costs and disbursements upon the appeal to the said Court of Appeals having been duly taxed in the sum of $121.13,

Ordered that the judgment and order of the Court of Appeals, and on motion of Thomas J. O'Neill, attorney for the plaintiff herein, it is.

Ordered and adjudged that the judgment and order of the Court of Appeals affirming the judgment in favor of the plaintiff and against the defendant for the sum of $50,222.50, entered in the office of the Clerk of the County of Putnam on the 20th day of October, 1930, be and the same hereby is in all things affirmed and made the judgment and order of this Court, and that the plaintiff recover from the defendant the costs of the appeal to the Court of Appeals taxed in the sum of $121.13, and that the plaintiff have execution issued therefor and also for the judgment entered in the office of the Clerk of this Court in favor of the plaintiff and against the defendant, on the 20th day of October, 1930, for the sum of $50,222.50.

Dated New York, June 10th, 1931.

Edw. S. Agor, Clerk.

[fol. 526] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER GRANTING STAY OF EXECUTION

The defendant, The New York, New Haven and Hartford Railroad Company, having made application for a stay of execution and enforcement of judgment in the above entitled case for a reasonable time to enable it to apply for and obtain a writ of certiorari from the Supreme Court of the United States.

It is ordered that the said defendant have sixty days from the date hereof within which to apply for a writ of certiorari from the Supreme Court of the United States, and that the execution and enforcement of the judgment herein be stayed for said time, and thereafter, until that Court finally adjudicates thereon, provided, the defendant shall file a bond with good and sufficient surety within ten days from the date hereof, conditioned to indemnify the plaintiff above named against all damages and costs that he may sustain by reason of the stay if the defendant fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting its application, or fails to make good its plea in the Supreme Court of the United States.

[fol. 527] It is further ordered that a copy of this order be served without delay on the plaintiff herein, or his attorney of record.

It is further ordered that this order be filed in the office of the Clerk of the Supreme Court of Putnam County.

Dated June 6th, 1931.

Benjamin N. Cardozo, Chief Judge of the Court of Appeals.

IN COURT OF APPEALS OF NEW YORK

[Title omitted]

AFFIDAVIT OF EDWARD R. BRUMLEY

STATE OF NEW YORK,
City and County of New York, ss.:

Edward R. Brumley, being duly sworn, deposes and says that he is an attorney and counsellor-at-law, and is of

[fol. 528] counsel for the defendant-appellant herein; that he is familiar with all the proceedings heretofore had herein.

That this is an action under the Federal Employers' Liability Act to recover damages for personal injuries. The case was tried before a jury in the Supreme Court, Putnam County, and resulted in a verdict for the plaintiff for Sixty Thousand Dollars ($60,000).

The Appellate Division, Second Department, reversed the judgment and order denying motion for a new trial upon the law and the facts, and granted a new trial, costs to abide the event, unless plaintiff, within ten days from service of a copy of the order of the Appellate Division, stipulate to reduce the verdict to the sum of Fifty Thousand Dollars ($50,000), in which event the judgment as so modified, and the order denying judgment as so modified, and the order denying motion for a new trial, were unanimously affirmed, without costs. Subsequently, plaintiff filed and served a stipulation consenting to the reduction of the verdict to Fifty Thousand Dollars ($50,000). This Court in a divided opinion handed down June 2nd, 1931, affirmed the judgment, with costs. Plaintiff is now in position to levy execution on the judgment herein.

Defendant-appellant is about to apply to the United States Supreme Court for a writ of certiorari to review the judgment of this Court.

We shall urge in our petition for a writ of certiorari that this Court has decided a federal question of substance not heretofore determined by the Supreme Court of the United States, or has decided it in a way probably not in accord with applicable decisions of that Court. Such ground of [fol. 529] application is in accordance with Rule 38, Sec. 5, of the Revised Rules of the Supreme Court of the United States, adopted June 5, 1928, effective July 1, 1928.

It is provided by Rule 38, Sec. 6, that a stay of execution and enforcement of a judgment or decere pending an application for review on writ of certiorari may be granted by a Judge of the Court rendering the judgment or decree, or by a Justice of the Supreme Court of the United States, and may be conditioned on the giving of security. See U. S. Code, Title 28, Sec. 350.

It is of course obvious that the enforcement of the judgment herein would operate to the detriment of the petitioner.

Under an established custom the Justices of the Supreme Court of the United States usually decline to consider applications for a stay pending certiorari unless they have first been presented to, and denied by, a Judge of the Court below. See Magnum Import Company, Inc. v. Coty, 262 U. S. 159.

In our petition we propose to urge the following law points:

1. It is necessary to look at the particular service at the very time of the accident.

Ill. Cent. R. R. v. Behrens, 233 U. S. 473.

2. One job is not subordinate to another job.

Ill. Cent. R. R. v. Peery, 242 U. S. 292.

3. Plaintiff's general work was not made up of a single, indivisible task.

Erie R. R. Co. v. Welsh, 242 U. S. 303.

[fol. 530] 4. Employment on other occasions is immaterial, including usual work.

Shanks v. Del., Lack & West. R. R., 239 U. S. 556;
Morini v. Erie R. R. Co., 253 N. Y. 539.

5. The engine in question was withdrawn from commerce.

Minneapolis & St. Louis R. R. Co. v. Winters, 242 U. S. 353;
Conklin v. N. Y. C. R. R. Co., 238 N. Y. 570;
Leslie v. Long Island R. Co., 248 N. Y. 511;
Morini v. Erie R. Co., 253 N. Y. 539.

6. Even though the engine was engaged exclusively in interstate commerce, it may be withdrawn from any commerce.

Chicago, K. & S. Ry. Co. v. Kindlesparker, 246 U. S. 657;
Industrial Commission v. Davis, 259 U. S. 182.

7. The place of repair is wholly immaterial.

Leslie v. Long Island R. Co., 248 N. Y. 511;
Morini v. Erie R. R. Co., 253 N. Y. 539.

8. We are here concerned with extensive repairs.

See last two cases cited for comparison.

[fol. 531] We respectfully submit that the above cases are controlling or, if not, this decision has extended the

field of application of the Federal Employers' Liability Act beyond the previous decisions. Clearly, it is a question of very great importance, national in scope, to every railroad employee, every railroad, and certainly, indirectly, to the public at large.

That the Act of Congress and the Rules of the Supreme Court in such cases made and provided, fix the time within which petitions for writs of certiorari may be filed in the Supreme Court of the United States at three months.

Your petitioner is prepared to perfect the record in this case and file its petition for writ of certiorari, in the Supreme Court of the United States, on or before the 1st day of August, 1931.

That your deponent is advised that in order that the proceedings may remain in their present status pending the disposition of such a petition for writ of certiorari, an order of this Court is required staying all proceedings on the part of plaintiff to collect and satisfy the judgment in amount of Fifty Thousand Two Hundred and Twenty-two and 50/100 Dollars ($50,222.50), entered in the office of the Clerk of the Supreme Court, County of Putnam, on the 31st day of March, 1931, in favor of this plaintiff and against this defendant, for without a stay of execution any relief that might result to the defendant appellant in case the United States Supreme Court should grant defendant-appellant's petition for writ of certiorari, would probably be valueless from a practical point of view.

[fol. 532] The defendant-appellant is prepared to make its application to the Supreme Court of the United States within a reasonable time. However, that Court is now in recess, and your deponent is informed and believes that it will not be in session again until October 5th, 1931; so that a petition for writ of certiorari cannot be decided by that Court before that date.

Deponent is also informed that the calendar in that Court is practically up to date; so that a petition for a writ of certiorari would probably be decided some time during the month of October, 1931.

Defendant offers herewith as security for the payment of the judgment herein, a Surety Company bond in amount of the judgment, with interest, and all costs which plaintiff may incur in connection with this appeal.

Wherefore your deponent respectfully requests an order granting the defendant sixty days within which to apply

for a writ of certiorari in the Supreme Court of the United States, and staying the execution and enforcement of the judgment herein for said time, and thereafter, until that Court finally adjudicates thereon, provided, the defendant shall file a bond with good and sufficient surety within ten days from the date of said order, conditioned to indemnify the plaintiff above named against all damages and costs that he may sustain by reason of the delay if the defendant fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting its application, or fails to make good its plea in the Supreme Court of the United States.

[fols. 533 & 534] That no other or previous application for the relief requested herein has been made by the defendant-appellant.

Edward R. Brumley.

Sworn to before me this 6th day of June, 1931. Leo P. Sifferlen, Notary Public, New York County. (Seal.)

Bond on appeal approved; omitted in printing.

[fol. 535] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 536] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 19, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,077. New York Supreme Court. Term No. 263. The New York, New Haven and Hartford Railroad Company, petitioner, vs. Clarence Bezue. Petition for a writ of certiorari and exhibit thereto. Filed July 28, 1931. File No. 36,077.

FILE COPY

FILED
JUL 28 1931
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1931

No. 263

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

CLARENCE BEZUE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, NINTH DISTRICT, AND BRIEF IN SUPPORT THEREOF.

JOHN M. GIBBONS,
EDWARD R. BRUMLEY,
FLEMING JAMES, JR.,
Counsel for Petitioner.

E. W. TRAVER, Law Printer, 154 Nassau St., N. Y. (Tel. BEekman 3-2726)

SUBJECT INDEX

	PAGE
Petition for a writ of certiorari	1–9
A. Summary statement of matter involved	1
B. Reasons relied on for the allowance of the writ	7
Prayer for writ	9
Brief in support of petition for writ of certiorari	10–19
I. The opinions of the courts below	10
II. Jurisdiction	10
III. Statement of the case	12
IV. Specification of errors	12
V. Argument	14
Summary of argument	14
Point A. The evidence did not justify the ruling of law made that the plaintiff was engaged in interstate commerce within the meaning of the Federal Employers' Liability Act	14
Point B. At the most plaintiff presented a fact question that should have been submitted to the jury	19
Conclusion	20

Table of Cases Cited

PAGE

Boston Elevated Ry. Co. v. Teele, 248 Fed. 424 (C. C. A. 1st) 19

Boyle v. Pennsylvania R. Co., 228 Fed. 266 (C. C. A. 3d) 15

Chicago, K. & S. Ry. Co. v. Kindlesparker, 246 U. S. 657 ..... 7, 17

Chi. & Rock Island R. R. v. Devine, 239 U. S. 52 12

Conklin v. N. Y. C. R. R. Co., 238 N. Y. 570; certiorari denied 266 U. S. 607 16

Erie R. R. Co. v. Collins, 253 U. S. 77 ..... 7, 17, 18

Erie R. R. Co. v. Szary, 253 U. S. 86 ..... 17, 18

Erie R. R. Co. v. Winfield, 244 U. S. 170 18

Ill. Cent. R. R. v. Behrens, 233 U. S. 473 ..... 7, 15, 17

Ill. Cent. R. R. v. Peery, 242 U. S. 292 ..... 7, 15

Industrial Commission v. Davis, 259 U. S. 182 ..... 7, 17

Leslie v. Long Island Co., 248 N. Y. 511 16

Louisville & Nashville R. R. Co. v. Parker, 242 U. S. 13 ..... 15, 19

Minneapolis & St. Louis R. R. Co. v. Winters, 242 U. S. 353 ..... 7, 16

Morini v. Erie R. R. Co., 253 N. Y. 539 16

N. Y. Central R. R. v. Carr, 238 U. S. 260 15

New York Cent. R. Co. v. Marcone, 281 U. S. 345 ..... 17, 18

Nor. Car. R. R. Co. v. Zachary, 232 U. S. 248 ..... 9, 18, 19

Onley v. Lehigh V. R. Co., 36 F. (2d) 705 (C. C. A. 2d); certiorari denied 281 U. S. 743 15

PAGE

Pederson v. Del., Lack. & West. R. R., 229 U. S. 146... 17

Penna. Co. v. Donat, 239 U. S. 50..... 19

Phila. & Read. Ry. Co. v. DiDonato, 256 U. S. 327..... 8

Richmond & Danville Railroad v. Powers, 149 U. S. 43 19

St. L. & Iron Mtn. Ry. v. McWhirter, 229 U. S. 265.... 12

St. L. & San Francisco Ry. v. Seale, 229 U. S. 156..... 15

Seaboard Air Line v. Horton, 233 U. S. 492..... 12

Shanks v. Del., Lack. & West. R. R., 239 U. S. 556...7, 15, 17

Southern Railway v. Lloyd, 239 U. S. 496..... 19

Southern Railway Co. v. Puckett, 244 U. S. 571.....15, 17

Sullivan v. N. Y., N. H. & H. R. R. Co., 105 Conn. 122; certiorari denied 273 U. S. 754..... 15

Wisconsin & Arkansas Lumber Co. v. Day, 35 F. (2d) 563 (C.C.A. 8th)..... 19

Table of Statutes Cited

Act of Cong. April 5, 1910, c. 143, §1, 36 Stat. 291...1, 9 *et seq.*

Act of Cong. April 22, 1908, c. 149, §1, 35 Stat. 65...1, 9 *et seq.*

Judicial Code, §237, Act of Congress, September 6, 1916, c. 448, §2, 39 Stat. 726; Act of Congress, February 13, 1925, c. 229, §1, 43 Stat. 937..... 11

Supreme Court of the United States

October Term, 1931

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Petitioner,* vs. CLARENCE BEZUE.	No.

PETITION FOR WRIT OF CERTIORARI

May it Please the Court:

The petition of The New York, New Haven and Hartford Railroad Company respectfully shows to this Honorable Court:

A. Summary Statement of the Matter Involved

This is an action for personal injuries brought under the Federal Employers' Liability Act (Act of Cong. April 22, 1908, c. 149, §1, 35 Stat. 65, and Act of April 5, 1910, c. 143, §1, 36 Stat. 291). The issues came on for trial before a Judge and jury in the Supreme Court, Putnam County, New York, on September 4th, October 2nd, 3rd, 9th and 10th, 1930, and resulted in a verdict in favor

of the plaintiff and against the defendant in the sum of $60,000 (R. 1, 453). The Appellate Division of the Supreme Court, Second Department, reversed the judgment and order upon the law and the facts and granted a new trial, unless plaintiff stipulated to reduce the verdict to the sum of $50,000, otherwise the judgment as modified and the order were unanimously affirmed, 232 N. Y. App. Div. 840. Plaintiff so stipulated (R. 1, 503-507). Thereafter defendant appealed as of right to the Court of Appeals from the judgment in favor of the plaintiff, which judgment reduced and modified the verdict, and also from the order of the Appellate Division modifying and reducing the judgment (R. 501, 502). The Court of Appeals has handed down a decision affirming the said judgment (257 N. Y. 480; R. 520, 521), and made a judgment and order of affirmance dated June 2nd, 1931 (R. 520, 521).

Plaintiff had been in the employ of the New Haven Railroad Company for nearly a year prior to the accident on September 2nd, 1929; for the first eight or nine months as an engine-wiper, working inside and outside of the roundhouse at Maybrook, New York (R. 144, 145). For three or four months prior to the accident he was classified as a truck operator, under the labor foreman, in the unskilled labor gang (R. 175). Defendant's Exhibit A, opposite page 470, shows the kind of truck he operated (R. 176). It was used for various purposes in the vicinity of the engine-house, and the crane was used for lifting (R. 279-281).

Some of the unskilled labor handled wheels, put things in position for mechanics, dumped coal, operated coal pockets; ran turntables, cleaned windows (R. 335). Plaintiff

himself was principally engaged in keeping locomotives in good repair. Occasionally he carried driving rods on the electric truck, removed and replaced engine brackets, removed pumps, assisted in removing and replacing cylinder heads on engines, assisted in moving side and main rods of engines to and from the machine shop, handled heavy materials for engines, took springs to them, assisted in removing and replacing cylinder pistons, and removing and replacing rails at drop pits (R. 190-194). "I never knew what I was going to do from one moment to the next" (R. 194). Sometimes his work was confined to locomotives in for only a few hours, at other times to locomotives in for two or three days (R. 145, 146, 151). He almost always worked with the electric crane, used for both light and heavy work (R. 145-151, 190-198, 233, 234, 175-179, 157, 277-281). He helped around the engines with a truck, lifted castings, pulled down grease boxes, put grease into the engines. He oiled springs, fixed draw-bars, changed pumps, often engaged in small jobs (R. 146, 151). At times he would take off driving wheels and do other heavy work (R. 277-281; for further details of his general work see 147-151, 190-194, 233, 234).

At Maybrook the railroad had a roundhouse with three sub-divisions, twenty-seven tracks, and a turntable in front (Defendant's Exhibit C, opposite page 472, R. 177-179, 331, 266). The roundhouse had pits in each subdivision. In addition to the roundhouse and turntable was the so-called Whiting Hoist Building with lathes, a hoist, four tracks, tool room and electrical shop (Defendant's Exhibit D, opposite page 474, R. 327-329). There were also a carpenter shop building (Defendant's Exhibit J, opposite page 482, R. 328-330); and a machine shop room (Defendant's Ex-

hibit L, opposite page 488, R. 267, 424). It is obvious that this Maybrook Terminal was not merely a place of lay over for engines, but also a place of repair. Exclusive of inspectors there were 193 men at the roundhouse (R. 424). In passing it may be noted that some of the side rods of engine 3221, with which we are particularly concerned, were taken to the above machine shop room (R. 425).

When in use most of the engines coming in and going out of the Maybrook Terminal were engaged in interstate commerce (R. 145, 148, 149, 267, 280, 299, 335, 336, 313, 314). Some of the engines were engaged in passenger service in the State of New York (R. 280). While most of the engines had a designated run, engine 3221 did not. From August 10th to 23rd, 1929, it had different departure times between Maybrook and New Haven, sometimes ran between Maybrook and East Hartford; and we find the same indefiniteness for the period September 4th to September 18th, 1929 (R. 148, 149, Plaintiff's Exhibit 15-B, opposite page 466; R. 273, 294, Plaintiff's Exhibit 15-A, opposite page 464). During both these periods it was engaged in interstate commerce; and it had been so engaged, when in use, from September 3rd, 1927, to August 10th, 1929 (R. 289, 270, Plaintiff's Exhibit 15-B, opposite page 466).

All engines operating in New York undergo a boiler wash every thirty days, and also a thirty-day inspection (R. 270). Certain repairs are attended to at this time. The evidence would seem to divide repairs into three classes—minor repairs that could be made between runs, repairs taking a longer time that could not be made between runs and were attended to at the boiler wash and inspection period, and classified repairs made after the

engine had gone approximately 35,000 miles, or about every eighteen months. These last repairs were made at Readville, Mass. (R. 337-340, 245, 288).

Engine 3221 arrived at Maybrook on August 23rd, 1929, and left on September 4th—a period of twelve days. It underwent a thirty-day boiler wash and a thirty-day inspection at that time (R. 270). The accident occurred on September 2nd (R. 271, 272). During this twelve-day period the main driving wheels of this engine were removed, and the journal turned, the latter task involving eight to ten hours of labor (R. 181, 341). Several parts of the engine were taken to the machine shop, the jacket over the fire box taken off, and the fire dumped (R. 282-284). Without these wheels the engine could not move on its own power (R. 336). Defendant's Exhibit I, consisting of three pages, opposite page 480, shows the work done (R. 285). Item 8 on page 3 of this Exhibit would take two men a period of five days (R. 322, 323). Items 26 to 35 on page 2 of Exhibit I would take two men 32 hours (R. 324-326). Skilled labor was performed on all days of the period except August 24th and 25th (R. 334, 335).

On the day in question plaintiff went on duty at 8 o'clock in the morning, and the accident occurred at 11 or 11:30. During the early morning he had operated the truck but that is all we know (R. 177). The tasks for the rest of the day had not yet been assigned (R. 194). Two hours or more prior to the accident he was asked to assist in moving the main pair of driving wheels of engine 3221 (R. 182, 183). He assisted in removing the block from the lathe, and in rolling the wheels from the Whiting Hoist Building to a switch, a distance of 619 feet, and from the

switch to the place of the accident, a distance of 1062 feet (R. 331).

This pair of driving wheels had been taken from engine 3221 in the roundhouse, to the back shop or Whiting Hoist Building, and there repaired (R. 152, 153, 186, 283). They were the main driving wheels of the engine, probably weighing ten or twelve tons, admittedly very heavy (R. 180, 181). Plaintiff and other men brought the truck to the back shop, and plaintiff removed a block out of the lathe, others removing the wheels from the lathe with the aid of a crane (R. 183, 184). These men, including plaintiff, then rolled the wheels by hand out of the shop, up the track to the switch, back on the main line leading to the turntable, and placed them on the turntable (R. 152). The turntable lined the wheels up with a track next to the track they were to be placed upon (R. 154). Plaintiff and the other men then pushed the wheels off the turntable. They were then blocked (R. 154). The table was lined up with the next track in order to pull out an engine so as to get at 3221 (R. 154). While the men waited for the signal to move the wheels forward out on the turntable again the wheels started rolling backward, resulting in the accident to the plaintiff (R. 154-156). If the accident had not happened they would have been put on the turntable, the turntable lined up with the track, and the wheels moved off (R. 157).

This was a large freight engine of the Santa Fe type. The main driving wheels are indicated by an X on Defendant's Exhibit P, opposite page 496 (R. 269, 274, 293, 348, 349).

B. Reasons Relied On for the Allowance of the Writ

Petitioner respectfully contends that the writ of certiorari should be granted to review and reverse the judgment of the Court of Appeals of the State for the following reasons:

(1) The decisions of the Supreme Court of the State of New York, the Appellate Division of the Supreme Court, Second Department, and of the Court of Appeals holding that plaintiff was engaged in interstate commerce as a matter of law are not in accord with the applicable decisions of this Court, including *Ill. Cent. R. R.* v. *Behrens*, 233 U. S. 473; *Ill. Cent. R. R.* v. *Peery*, 242 U. S. 292; *Shanks* v. *Del., Lack. & West. R. R.*, 239 U. S. 556; *Minneapolis & St. Louis R. R. Co.* v. *Winters*, 242 U. S. 353; *Chicago, K. & S Ry. Co.* v. *Kindlesparker*, 246 U. S. 657; *Industrial Commission* v. *Davis*, 259 U. S. 182.

(2) If it can be said that the decisions in this case are not contrary to applicable decisions of this Court, it must then be said they decide a federal question of substance and importance, not heretofore determined by this Court, and it is in the public interest to have that question decided by this Court.

(3) The intimation in *Erie R. R. Co.* v. *Collins*, 253 U. S. 77, as to abrupt transition, with no interval between duties, should not govern this case. It has no application to a fact situation involving a task of at least two hours' detailed, peculiar labor.

(4) Further "accurate delimitation" is necessary, and

this case "has importance beyond the interest of the parties to it," and it will "make a test by which further cases may be assigned to intrastate or interstate commerce and mark the power and policies that may be necessary or convenient to either." *Phila. & Read. Ry. Co.* v. *DiDonato*, 256 U. S. 327.

(5) The Court of Appeals should have determined whether the engine had been withdrawn from service, such determination being a necessary part of the question. By refusing to consider the engine work, the status of the engine, the place of repairs, the extent of the repairs, the particular work at the particular time, the Court of Appeals has done one of two things: (1) Made a decision contrary to the applicable decisions of this Court; or (2) Laid down a new test not hitherto approved as a test by this Court.

(6) If this decision stands as authority the rights and obligations of many employees and many railroads will lack uniformity of administration.

(7) As the engine had not been designated to any particular commerce, and as it had been definitely withdrawn from any commerce, work in connection with it was not in interstate commerce.

(8) The general plant service of plaintiff should not give color to his particular work at the particular time.

(9) Plaintiff's work had one immediate objective at the time of the accident, but the Court of Appeals treated this objective as immaterial, and decided the question on a previous objective of general plant service, non-existent at the time of the accident. In so doing the Court of Appeals has

gone beyond the principles laid down by this Court as determining the question of interstate commerce.

(10) Your petitioner "expressly claimed immunity by reason of the act of Congress, and the highest Court of the State either decided or assumed that the records sufficiently presented a question of Federal right and decided against the party asserting that right." *Nor. Car. R. R. Co.* v. *Zachary*, 232 U. S. 248, 257.

11) There was evidence that at least was sufficient to go to the jury as to whether the case came within the Federal Employers' Liability Act.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of New York for the Ninth District, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 3-328, Clarence Bezue, plaintiff-respondent, against The New York, New Haven and Hartford Railroad Company, defendant-appellant, and that the said order and judgment of the Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

By JOHN M. GIBBONS,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Petitioner,
vs.
CLARENCE BEZUE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinions of the Courts Below

The opinion in the Court of Appeals is reported in *Bezue v. The New York, New Haven and Hartford Railroad Company,* 257 N. Y. 480, decided June 2, 1931 (R. 511-519).

The opinion in the Appellate Division, Second Department, is reported in 232 N. Y. App. Div. 840 (R. 508).

The Trial Court wrote no opinion (R. 500).

II

Jurisdiction

(1) The jurisdiction of this Court is invoked under the Federal Employers' Liability Act (Act of Cong. April 22,

1908, c. 149, §1, 35 Stat. 65, and Act of April 5, 1910, c. 143, §1, 36 Stat. 291).

The jurisdiction is also invoked under Judicial Code, §237, as amended by Act of Congress, September 6, 1916, c. 448, §2, 39 Stat. 726, and Act of February 13, 1925, c. 229, §1, 43 Stat. 937.

(2) The date of the judgment to be reviewed is June the 2nd, 1931 (R. 520, 521).

(3) This case was tried and decided by the state courts under the Federal Employers' Liability Act, the complaint alleging interstate commerce, and the answer denying it (R. 12-16). The judgment was rendered for the plaintiff in the sum of $60,222.50 (R. 23, 24). Petitioner appealed from the judgment to the Appellate Division of the Supreme Court, Second Judicial Department (R. 2, 3). That Court reversed the judgment and order, and directed a new trial unless plaintiff stipulated to reduce the verdict to the sum of $50,000, in which event the judgment as so modified, and the order, were unanimously affirmed (R. 503, 504). Plaintiff consented to such reduction (R. 507), and thereupon plaintiff appealed to the Court of Appeals (R. 501, 502), which Court affirmed the judgment (R. 520, 521), two of the Judges dissenting. Thereupon the judgment and order of the Court of Appeals (dated June 2, 1931) was made the judgment and order of the Supreme Court on the 9th day of June, 1931 (R. 522, 523), and judgment was entered on the remittitur of the Court of Appeals on the 10th day of June, 1931 (R. 524, 525).

(4) The cases believed to sustain the jurisdiction of this Court are:

St. L. & Iron Mtn. Ry. v. McWhirter, 229 U. S. 265, 275-277;

Seaboard Air Line v. *Horton*, 223 U. S. 492, 497, 499;

Chi. & Rock Island R. R. v. *Devine*, 239 U. S. 52, 54.

III

Statement of the Case

A full statement of the case has been given under heading "A" in the petition and in the interest of brevity the statement is not repeated at this point.

IV

Specification of Errors

(1) The trial court erred in denying petitioner's motion, made at the end of plaintiff's case, to dismiss the complaint on the ground that he had failed to prove interstate commerce, had failed to prove that he came under the Federal Employers' Liability Act at the time and place of the accident, that the evidence showed he was not engaged in such commerce at such time and place, that the engine had been withdrawn from service, that he was engaged in repair work with that engine at that time, that he was not engaged in commerce or movement in any way (R. 314-316).

(2) The trial court erred in finding and holding that the engine was an instrumentality of interstate commerce, that it was not withdrawn from the service, but that round-

house repairs were being made, and that during that time it continued in the service and was an instrumentality of interstate commerce, and the plaintiff at the time was engaged in interstate commerce work upon an instrumentality of interstate commerce that had not been permanently withdrawn from the service (R. 315, 316).

(3) The trial court erred in denying petitioner's motion for the direction of a verdict in its favor, made at the end of the entire case, on the ground of failure of proof that plaintiff was engaged in interstate commerce (R. 431, 432).

(4) The trial court erred in denying defendant's motion to go to the jury on the question of interstate commerce (R. 431).

(5) The trial court erred in its charge to the jury wherein it said that the plaintiff and defendant, as a matter of law, were engaged in interstate commerce, and plaintiff was entitled to the benefit of the Federal Employers' Liability Act (R. 434).

(6) The trial court erred in denying defendant's motion to set aside the verdict and for a new trial upon the exceptions in the judge's minutes, that the verdict was contrary to the evidence, contrary to the law, and on the further ground of the exceptions taken to the ruling on the question of interstate commerce (R. 453, 454).

(7) The Court of Appeals erred in holding that plaintiff was engaged in interstate commerce.

V

Argument

Summary of the Argument

Point A. The evidence did not justify the ruling of law made that the plaintiff was engaged in interstate commerce within the meaning of the Federal Employers' Liability Act.

Point B. At the most plaintiff presented a fact question that should have been submitted to the jury.

POINT A

The evidence did not justify the ruling of law made that the plaintiff was engaged in interstate commerce within the meaning of the Federal Employers' Liability Act.

The prevailing opinion of the Court of Appeals proceeds on the theory that the roundhouse was an essential part of the railroad's system, and that the respondent was engaged in a plant service (R., 513). The Court reaches the conclusion that this was employment in the maintenance of the roundhouse which was a necessary part of the plant, essential in the railroad business of carrying on interstate commerce (R., 516). The dissenting opinion of Judge O'Brien says that his energies were directed to an object which was not an instrument of commerce, and that the character of his employment on other occasions was immaterial (R., 518, 519). The majority opinion finds it unnecessary to determine whether at the time of the accident the

locomotive being repaired had been so withdrawn from service that it was not in use in interstate commerce (R., 560.)

The test, as we have always understood it, is the particular service or task at the particular time. *Ill. Cent R. R.* v. *Behrens,* 233 U. S. 473. What the employment is on other occasions, even the usual work, becomes immaterial. *Shanks* v. *Del. & Lac. R. R.,* 239 U. S. 556; see also *St. L. & San Francisco Ry.* v. *Seale,* 229 U. S. 156. One job should not be subordinated to another job. *Ill. Cent. R. R.* v. *Peery,* 242 U. S. 292. It is true the task or service will not be subdivided into the particular acts which comprise it, but will be viewed as a unit in the light of its purpose. *N. Y. Central R. R.* v. *Carr,* 238 U. S. 260; *Louisville & Nashville R. R. Co.* v. *Parker,* 242 U. S. 13. But "service", as used by this Court, has always referred to the immediate task at hand; there has been no hesitancy in splitting up a day's work. *Ill Cent. R. R.* v. *Behrens, supra; Illinois Cent. R. R.* v. *Peery, supra; Southern Railway Co.* v. *Puckett,* 244 U. S. 571; see *N. Y. Central R. R.* v. *Carr, supra,* at page 262. Other courts have so understood. *Onley* v. *Lehigh V. Ry. Co.,* 36 F. (2d) 705 (C. C. A. 2d), cert. denied, 281 U. S. 743; *Boyle* v. *Pennsylvania R. Co.,* 228 Fed. 266 (C. C. A. 3d); *Sullivan* v. *N. Y. N. H. & H. R. R. Co.,* 105 Conn. 122, cert. denied, 273 U. S. 754. The Court of Appeals has given the term a broader meaning, using it as a synonym for general employment. Gramatically, of course, this is permissible; one may even speak of all railroad employees as engaged in "railroad service". But the word has become definitely connected with the interpretation of the Act by sanction from this Court. And the decision sought to be reviewed involves such an enlargement

of its connotation in this connection, as materially to broaden the scope and application of the federal statute. It may be that this is a correct prediction of the future development of the law. If so, this is a matter to be pronounced upon by this Court. Although this Court has, since the enactment of the statute, laid down general tests for determining interstate commerce, we can find no near approach, in its several decisions, to the far-reaching principle announced here by the Court of Appeals.

We submit that to call plaintiff's work "plant service" is mere verbalization. He was doing nothing with reference to the maintenance, repair, or construction of the plant. Probably his general employment was sometimes in interstate commerce, sometimes not. But even assuming continuous general interstate work up to the day of the accident the decisions of this Court compel consideration of the particular work at the time. If the particular service is in conflict with the general work the Court of Appeals should have disregarded the general work, instead of doing which it disregarded the particular service which lasted at least two hours and was definite as to instruction, kind, place.

The state court should have inquired into the question whether the particular engine had been withdrawn from commerce. In *Minneapolis & St. Louis R. R. Co.* v. *Winters*, 242 U. S. 353, the period of withdrawal was three days. Curiously enough in *Conklin* v. *N. Y. C. R. R. Co.*, 238 N. Y. 570, cert. denied, 266 U. S. 607, the period of withdrawal was five days, in *Leslie* v. *Long Island Co.*, 248 N. Y. 511, the period of withdrawal was a few hours; and in *Morini* v. *Erie R. R. Co.*, 253 N. Y. 539, the period of withdrawal

was but a day, and yet the Court of Appeals considered the particular car and held it to be withdrawn from commerce.

Even though the use of the engine was exclusively interstate it may be withdrawn from commrece. *Chicago, K. & S. Ry. Co.*, v. *Kindlesparker*, 246 U. S. 657; *Industrial Commission* v. *Davis*, 259 U. S. 182.

As authority for failure to determine whether at the time of the accident the locomotive being repaired had been withdrawn from interstate commerce the majority opinion of the Court of Appeals refers to, among other cases, *Erie R. R. Co.* v. *Collins*, 253 U. S 77; *Pedersen* v. *Del., Lack. & West. R. R.*, 229 U. S. 146; *Shanks* v. *Del., Lack & West. R. R., supra; New York Cent. R. Co.* v. *Marcone*, 281 U S. 345; *Erie R. R. Co.* v. *Szary*, 253 U. S. 86. The dissenting opinion says that such decisions are readily distinguishable because the workmen at the time of their injuries were employed in duties directly affecting both interstate and intrastate transportation (R. 519).

We had supposed that the time element is the time of the injury (*Shanks* v. *Del., Lack. & West. R. R., supra*); that the service is the particular service or task when the injury occurred (*Ill. Cent. R. R.* v. *Behrens, supra*); that that service or task is the work in question (*Pedersen* v. *Del., Lack. & West. R. R., supra*).

In the case at bar there was no direct or immediate connection with previous acts. The particular act was the whole work for at least two hours, gave character to the work then being performed. Plaintiff's rank or title or previous job is immaterial. *Southern Railway Co.* v.

Puckett, supra. Certainly he was not engaged, throughout the days, in a single and indivisible task, and what he did on the day of the accident, prior to the two hour period, is vague. Nor have we the case of an employee going to or from work, discharging a duty of his employment which partakes of the character of the work as a whole. *Erie R. R. Co.* v. *Winfield,* 244 U. S. 170, 173. The plaintiff was not merely upon the premises, on duty but not performing any particular service at the time. *Nor. Car. R. Co.* v. *Zachary,* 232 U. S. 248; *Erie R. R. Co.* v. *Szary, supra; New York Cent. R. Co.* v. *Marcone, supra.*

In *Erie R. R. Co.* v. *Collins, supra,* this Court found both the instrumentalities and employments gave interstate color to the work. In *Erie R. R. Co.* v. *Szary, supra,* the plaintiff prepared sand for immediate use by engines, some of which were engaged in interstate commerce. We find nothing said by this Court that serves as a basis for the point of view adopted by the Court of Appeals, with its utter disregard of particular service at the particular time, its express refusal to consider that phase of the problem.

The judgment of the Court of Appeals is not in accord with the applicable decisions of this Court, at any rate, it decides a federal question of substance and importance not heretofore determined by this Court.

The decision affects many thousands of railroad employees engaged in so-called "plant" work. Although not unanimous, because of the high standing of the Court of Appeals of the State of New York it will have great influence throughout the country. After all these years and

many pronouncements we still have an interstate question which, we respectfully submit, fully deserves adjudication by this Court.

POINT B

At the most plaintiff presented a fact question that should have been submitted to the jury.

Even where substantial contradiction was doubtful this Court approved submission of a case to the jury. *Nor. Car. R. R. Co.* v. *Zachary, supra,* at p. 261. Please see also *Penna. Co.* v. *Donat,* 239 U. S. 50, 52; *Southern Railway* v. *Lloyd,* 239 U. S. 496, and cases cited; *Louisville & Nashville R. R. Co.* v. *Parker, supra.* An issue is one for the jury's determination if different inferences can be drawn by reasonable men from the facts concerning it, even where the facts themselves are not in dispute. *Richmond & Danville Railroad* v. *Powers,* 149 U. S. 43; *Boston Elevated Ry. Co.* v. *Teele,* 248 Fed. 424 (C.C.A. 1st); *Wisconsin & Arkansas Lumber Co.* v. *Day,* 35 F. (2d) 563 (C.C.A. 8th). Petitioner adequately raised this question (R. 431).

While all the state judges dealt with the problem as one of law, apparently the trial judge and the five judges in the Appellate Division considered engine status as material, five in the Court of Appeals as immaterial and two in the Court of Appeals concluded plaintiff was not engaged in interstate commerce.

CONCLUSION

It is, therefore, respectfully submitted that this case is
calling for the exercise by this Court of its supervisory powers,
order that the judgment of the Court of Appeals of the State
New York may be reversed and that to such an end a writ of c
tiorari should be granted and this Court should review the decis
of the Court of Appeals and finally reverse it.

JOHN M. GIBBONS,
Counsel for Petitione

EDWARD R. BRUMLEY,
FLEMING JAMES, JR.
Of Counsel.

FILE COPY

FILED
DEC 31 193
CHARLES ELMORE CRO
CLER

Supreme Court of the United States

OCTOBER TERM, 1931

No. 263

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

against

CLARENCE BEZUE,

Respondent.

PETITIONER'S BRIEF

JOHN M. GIBBONS,
Counsel for Petitioner.

EDWARD R. BRUMLEY,
FLEMING JAMES, JR.,
Of Counsel.

R. W. TRAVER, Law Printer, 154 Nassau St., N. Y. (Tel. BEekman 3-2736)

SUBJECT INDEX

	PAGE
I. The Opinions of the Courts Below	1
II. Jurisdiction of this Court	2
III. Statement of the Case	2
IV. Specification of Errors	13
V. Argument	15–23
Summary of Argument	15
POINT A. The particular service performed by respondent at the time of his injury was repair of a locomotive withdrawn from transportation so that neither the instrumentality nor the character of the work could be interstate	16
POINT B. The character of the work which respondent did at other times is immaterial	19
POINT C. At the most respondent presented a fact question which should have been submitted to the jury	23
Conclusion	24

TABLE OF CASES CITED

PAGE

B. & O. S. W. R. R. v. Burtch, 263 U. S. 540 18

B. & O. R. R. Co. v. Branson, 242 U. S. 623 16

Barlow v. Lehigh Valley R. R. Co., 214 N. Y. 116 3

Chi., Burlington & Q. R. R. v. Harrington, 241 U. S. 177 ..... 18, 21

Chicago, K. & S. Ry. Co. v. Kindlesparker, 246 U. S. 657 ..... 4, 16, 20

Chicago & North Western Ry. Co. v. Bolle, U. S. Supreme Ct., November 23, 1931 ..... 4, 12, 20, 21

Chi. & Rock Island R. R. v. Devine, 239 U. S. 52 24

Chicago, Rock Island Ry. v. Wright, 239 U. S. 548 18

Del., Lack. & West. R. R. v. Yurkonis, 238 U. S. 439 .. 18

Erie R. R. Co. v. Collins, 253 U. S. 77 ..... 15, 18

Erie R. R. Co. v. Szary, 253 U. S. 86 ..... 18, 23

Erie R. R. Co. v. Winfield, 244 U. S. 170 22

Erie Railroad Co. v. Welsh, 242 U. S. 303 21

Grand Trunk Ry. Co. v. Lindsay, 233 U. S. 42 17

Great Northern Ry. v. Otos, 239 U. S. 349 18

Ill. Cent. R. R. v. Behrens, 233 U. S. 473 ..... 20, 21

Ill. C. R. Co. v. Cousins, 241 U. S. 641 18

Illinois Central R. R. Co. v. Peery, 242 U. S. 292 21

Industrial Commission v. Davis, 259 U. S. 182 ..... 4, 17, 20

Johnson v. Southern Pacific Co., 196 U. S. 1 ..... 17, 21

PAGE

Kinzell v. Chicago, M. & St. P. Ry. Co., 250 U. S. 130..19, 22

Law v. Illinois Cent. R. Co., 208 Fed. 869..... 4

Lehigh Valley R. R. Co. v. Barlow, 244 U. S. 183..... 18

Louisville & Nashville R. R. Co. v. Parker, 242 U. S. 13 .....22, 24

Minneapolis & St. Louis R. R. Co. v. Winters, 242 U. S. 353 .....16, 21

New York Central R. R. v. Carr, 238 U. S. 260..... 22

New York Cent. R. Co. v. Marcone, 281 U. S. 345.....18, 23

New York Cent. R. R. Co. v. Porter, 249 U. S. 168.... 19

New York Cent. etc. R. R. Co. v. Tonsellito, 244 U. S. 360 24

New York Central R. R. Co. v. White, 243 U. S. 188...18, 19

New York Central R. R. Co. v. Winfield, 244 U. S. 147 .....19, 21

Nogueira v. N. Y., N. H. & H. R. R. Co., 281 U. S. 128 3

Norfolk & Western Ry. v. Earnest, 229 U. S. 114.....17, 21

Nor. Car. R. R. Co. v. Zachary, 232 U. S. 248.....18, 23, 24

Pecos & Northern Ry. v. Rosenbloom, 240 U. S. 439... 24

Pedersen v. Del., Lack. & West. R. R., 229 U. S. 146...19, 21

Penna. Co. v. Donat, 239 U. S. 50.....22, 24

Phila., B. & W. R. R. Co. v. Smith, 250 U. S. 101..... 19

Phila. & Read. Ry. Co. v. DiDonato, 256 U. S. 327..... 22

Phila. & Read. Ry. Co. v. Hancock, 253 U. S. 284.....17, 18

Phila. & Read. Ry. Co. v. Polk, 256 U. S. 332..... 22

PAGE

St. Louis, San Francisco & Texas Ry. v. Seale, 229 U. S. 156 20

Seaboard Air Line v. Koennecke, 239 U. S. 352 24

Seaboard Air Line v. Moore, 228 U. S. 433 ..... 18, 24

Shanks v. Del., Lack. & West. R. R., 239 U. S. 556 .. 18, 19, 20

So. Pac. Co. v. Industrial Accident Comm., 251 U. S 259 19

Southern Railway v. Lloyd, 239 U. S. 496 24

Southern Railway Co. v. Puckett, 244 U. S. 571 ..... 21, 22

Walsh v. N. Y., N. H. & H. R. R. Co., 223 U. S. 1 18

TABLE OF STATUTES CITED

Act of Cong., April 22, 1908, c. 149, §1, 35 Stat. 65 2

Act of Cong., April 5, 1910, c. 143, §1, 36 Stat. 291 2

Act of Cong., June 7, 1924, c. 355, §2, 43 Stat. 659 8

APPENDICES

APPENDIX A:

Act of Congress of April 22, 1908, c. 149, §1, 35 Stat. 65 25

APPENDIX B:

Act of Congress of June 7, 1924, c. 355, §2, 43 Stat. 659 26

Supreme Court of the United States

OCTOBER TERM, 1931
No. 263

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Petitioner,

against

CLARENCE BEZUE,
Respondent.

BRIEF ON BEHALF OF THE PETITIONER, THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

I

The Opinions of the Courts Below

The opinion, including the dissenting opinion, in the Court of Appeals is reported in *Bezue* v. *The New York, New Haven and Hartford Railroad Company,* 256 N. Y. 427, decided June 2, 1931 (R., 489-495).

The memorandum decision of the Appellate Division, Second Department, is reported in 232 N. Y. App. Div. 840 (R., 487).

The trial court wrote no opinion (R., 482).

II

Jurisdiction of this Court

This Court granted petitioner's application for writ of certiorari on October 19th, 1931 (R., 503).

III

Statement of the Case

This is an action for personal injuries brought under the Federal Employers' Liability Act (Act of Cong. April 22, 1908, c. 149, §1, 35 Stat. 65, and Act of April 5, 1910, c. 143, §1, 36 Stat. 291). The issues came on for trial before a Judge and a jury in the Supreme Court, Putnam County, New York, in September and October, 1930, and resulted in a verdict in favor of the plaintiff and against the defendant for $60,000 (R., 1, 352-355). The Appellate Division of the Supreme Court, Second Department, reversed the judgment and order upon the law and the facts and granted a new trial, unless plaintiff stipulated to reduce the verdict to the sum of $50,000, otherwise the judgment as modified and the order were unanimously affirmed. 232 N. Y. App. Div. 840. Plaintiff so stipulated (R., 1, 486). Thereafter petitioner appealed as of right to the Court of Appeals from the judgment in favor of the plaintiff, and also from the order of the Appellate Division modifying and reducing the judgment (R., 483, 484). The Court of Appeals affirmed the said judgment, and made a judgment and order of affirmance dated June the 3rd, 1931 (R., 495, 496).

Respondent (plaintiff below) was injured September 2, 1929, at Maybrook, New York, while in the employ of the

petitioner (defendant below). He was assisting to move a pair of main driving wheels belonging to engine 3221 and was thrown over the journal of the wheels when a block was removed and they rolled backward.

He went on duty at eight o'clock in the morning and the accident happened about 11:30 (R., 110).

The majority opinion of the Court of Appeals said that respondent was engaged in a plant service, and it did not matter "that at the moment of injury an employee was temporarily at work on a locomotive or some other instrumentality not engaged at the time in interstate commerce". (R., 491). Because in character the roundhouse was an essential instrumentality of interstate commerce, his plant service was also of this character, according to Judge Hubbs.

The dissenting opinion by Judge O'Brien, concurred in by Judge Kellogg, says in effect that the locomotive was withdrawn from commerce, that the character of respondent's employment on other occasions is immaterial. "His energies were directed toward an object which was not an instrument of commerce" (R., 495).

The majority opinion of the Court of Appeals seems to be based partly upon fear of an unsatisfactory result to the employee if any other conclusion is reached. In *Barlow* v. *Lehigh Valley R. R. Co.*, 214 N. Y. 116 (reversed in 244 U. S. 183), the anomalous situation was recognized but legislation was considered the only possible remedy (p. 121). Different rights at different times is a familiar consequence but hardly a reason for a special conclusion. See *Nogueira* v. *N. Y., N. H. & H. R. R. Co.*, 281 U. S. 128, 137.

The trial court, adopting another theory, upon the authority of *Law* v. *Illinois Cent. R. Co.*, 208 Fed. 869 (C C. A. 6th, 1913) held that plaintiff was engaged in interstate commerce because the engine was not withdrawn from service, but the difficulty with the *Law* case is the failure of the Circuit Court of Appeals to give consideration to time required for repairs (p. 872), which is contrary to the views of this Court in *Industrial Commission* v. *Davis*, 259 U. S. 182. In the latter the District Court of California, relying upon the *Law* case, was reversed. In *Chicago, K. & S. Ry. Co. v. Kindlesparker*, 234 Fed. 1, the Circuit Court of Appeals, relying upon the *Law* case, was overruled by this Court. 246 U. S. 657.

The sole fundamental question presented is whether the respondent "was engaged in interstate transportation or in work so closely related to such transportation as to be practically a part of it." Chicago & North Western Ry. Co. v. Bolle, decided by this Court on November 23, 1931.

Respondent's particular work

Two hours or more before he was injured, early in the morning, respondent's foreman told him to help move a main pair of driving wheels of engine 3221, then in the lathe in the Whiting Hoist building. With his truck he removed a heavy block from the lathe, and then assisted in rolling the wheels from the building to a switch, a distance of 619 feet, and from the switch to the place of the accident, 1062 feet (R., 135-139, 111-117, 257, 258).

These very heavy main driving wheels, from engine 3221, without which it could not run, had been taken to

this back shop or Whiting Hoist building and repaired (R., 112, 133-136, 219, 220, 262). They are indicated by an X on Defendant's Ex. P (R., 480, 271, 272). See also Defendant's Exs. N and O (R., 476, 268, 269; and 478, 269, 270, respectively).

The wheels were rolled from the Whiting Hoist building upon the turntable, in front of the roundhouse, then off and placed on track No. 17. Engine 3221 was pulled by another engine upon the table so the wheels could be placed in the pit of the track and applied to the engine (R., 113, 115, 278, 322, 330, 332).

While the men waited for the signal to move the wheels forward out on the turntable again they started rolling backward, resulting in the accident to the respondent (R., 111-117). If the accident had not happened they would have been put on the turntable, the turntable lined up with the track, and the wheels moved off (R., 115). The following morning they were to go under the engine, but respondent had nothing to do with the placement of them on the engine (R., 258). In fact, respondent never assisted in the actual applying of wheels to an engine (R., 146). So we see he is removed still farther from transportation, having nothing to do with the operation of 3221 or with any work incident thereto. Although he had not often assisted in this kind of work it belonged to the job of the unskilled labor force (R., 142, 261).

Part of the repairs of the engine could have been done on only four out of twenty-seven tracks, and in two out of the three sections of the roundhouse, because the other tracks were not equipped with a drop pit (R., 131, 132, 205, 206, 257, 262). This physical limitation, aside from all

other considerations, serves to particularize and separate the job at hand.

His acts in reference to the engine had no more relation to transportation than those of the machinist, for instance, who spent eight to ten hours turning the journal (R., 265, 266). He faced no casual labor for with his own helper (R., 118, 193), the removal from the lathe and the rolling of the wheels required some 5 to 10 men (R., 139, 159-161, 163, 278, 279, 330, 331). This was not one of the "small jobs" respondent had early described (R., 111), but a big job in time consumed, number of men involved, exertion applied.

Neither the acts of service performed by the respondent nor the instrumentality under repair possessed the character of interstate transportation within the purview of the cases cited under Point A.

Engine 3221 was withdrawn from service

Engine 3221 did not have a designated run (this appears from an examination of Plaintiff's Ex. 15-B covering the period August 10th to 23rd, 1929, and Plaintiff's Ex. 15-A covering the period September 4th to September 18th, 1929 [R., 397-422, 367-395, 210-212, 226-234, 243, 244]). During both these periods it had been engaged in interstate commerce, and also, *when in use,* from September 3rd, 1928, to August 9th, 1929 (R., 224, 225).

It is also true that for the period September 3rd, 1927, to September 3rd, 1928, this engine 3221, *when in actual use* by the petitioner, and when operating in and out of

Maybrook, New York, or in the Maybrook Yard, New York, was engaged in interstate commerce, although the record does not disclose whether during this last named period it had been used on any other division (R., 225, 226).

Engine 3221 arrived at Maybrook on August 23rd, 1929, the accident occurred September 2nd, and it left on September 4th,—a period of twelve days.

Defendant's Ex. I (R., 458-460) is an abstract of the inbound inspector's report, engineers' report, and house inspectors' report. The first two sheets contain thirty-eight items, and the third sheet sixteen additional items (R., 221, 222, 184-186, 247, 263, 189, 203-205). "Yes" on these three pages means that the job was completed (R., 246).

Defendant's Ex. J. (R., 464-468) shows what it was necessary to do to accomplish the major items as reported (R., 222-224). Repairs held for the thirty-day period could not be handled between runs (R., 263).

During those twelve days at Maybrook the main driving wheels of this engine were removed to the back shop, the journal or axle turned, the latter task involving eight to ten hours of labor, several parts of the engine were taken to the machine shop, the fire dumped, the jacket over the fire-box taken off, the boiler of the engine washed, and various other jobs attended to as appears from Defendant's Ex. I (R., 458-460, 179, 219-221, 253, 254, 266).

To repair 417 leaking bolts would take two skilled men five days (Item 8, p. 3, Defendant's Ex. I, R., 458-460, 249, 250). To renew certain bushings would take two men

thirty-two hours (Items 26-35, p. 2, Defendant's Ex. I, R., 458-460, 252, 253). As a matter of fact skilled labor was performed on all days of the period excepting August 24th and 25th (R., 260, 261). Of course, with the main driving wheels off the engine could not move under its own power (R., 262); just before the accident was pulled by another engine (R., 330).

In one part of the opinion by Judge Hubbs of the Court of Appeals it seems to be assumed that the instrumentality was not engaged at the time in interstate commerce, although the court deemed it unnecessary to determine this, and certainly the dissenting opinion of Judge O'Brien argues that the engine was withdrawn from service, was "a useless thing, incapable of allocation to commerce of any kind." It, therefore, seems to be the opinion of the Court of Appeals that the equipment involved was out of service, and when we consider the fact situation, the character of engine 3221 at the time of the accident—the nature of the repairs, the time consumed in making them, the several places of repairs, the condition of the engine at the time of the accident—we think there can be little doubt of its complete withdrawal from transportation of any kind.

Admittedly this engine was undergoing a boiler wash and inspection, in accordance with the Act of June the 7th, 1924, c. 355, §2, 43 Stat. 659, providing against "use" when not in "proper condition." This boiler wash always afforded opportunity to make many additional repairs, all in this case between August 23rd and September the 4th (R., 209, 253). Repairs during a mere layover between runs were one thing, repairs requiring a longer time were quite another, and, when possible, held for the boiler wash period (R., 263).

The railroad buildings at Maybrook, New York

The traffic handled at Maybrook came from the Lehigh & Hudson, the Ontario & Western, the Erie, the Lehigh and New England, besides petitioner's own road (R., 206, 207). Some of the foreign engines were repaired there (R., 231). Jennings was aptly called the general foreman at the Maybrook engine house *terminal* (R., 226).

The roundhouse or engine-house had three subdivisions with twenty-seven tracks, and a turntable in front (Defendant's Ex. C; R., 450; 131, 132, 205, 206, 257), and four tracks with drop pits (R., 262).

To the right of the roundhouse was a machine shop, containing a room about 70 feet long and 40 feet wide, with very considerable machinery in it (Defendant's Ex. L; R., 472; 268, 333).

To the right of the machine shop was a small building used for a carpenter shop and other purposes (Defendant's Ex. J; R., 462, 256, 257).

To the right of this small building was the so-called Whiting Hoist building, about 100x93 feet, showing at the extreme right of Defendant's Ex. J (R., 462; 257, 219, 255, 256). Here were four tracks, two with pits, and a Whiting Hoist having a capacity of 400 tons, used for raising engines over driving wheels. In the interior were a lathe that held driving wheels, and another lathe for electric welding. This building also had a tool room and electrical shop (R., 255, 256).

The main pair of driving wheels of engine 3221 had been

taken to this building, and the journal turned (R., 254). (Lathe in room shown in Defendant's Ex. D; R., 452, 254.) Some of the side rods and other parts of engine 3221 were taken to the machine shop room, which we have described, and some of the work on the engine was done there (R., 219, 334).

The tracks leading to the Whiting Hoist building, including the tracks on which the wheels were rolled on the day of the accident, are shown in Defendant's Ex. K (R., 470; 267, 268. Also Defendant's Ex. L; R., 472; 268). The tracks leading into the roundhouse, including track 17 on which the accident occurred, are shown in Defendant's Ex. M (R., 474, 268). The trucks ran along concrete floors from the roundhouse to the various buildings (R., 215, 216).

It is obvious that this Maybrook Terminal, with its buildings and equipment, was not merely a place of layover for engines. Even the so-called roundhouse alone was a place of repair over the drop pits, and the plant also included a machine shop, carpenter shop, and back shop or Whiting Hoist building, with skilled and unskilled forces of labor there to the number of about 203 (R., 333). The trial court recognized the relevancy of this line of proof of surrounding conditions (R., 255).

Engine repairs generally at Maybrook Terminal

While most of the engines at the Maybrook Terminal were engaged in interstate commerce when in use, some of them operated within the State of New York (R., 217, 229). Of course, this becomes immaterial in the event such engines were withdrawn at various times from all commerce for purpose of repair. The evidence would seem

to divide repairs into three classes—minor repairs that could be made between runs, repairs taking a longer time that could not be made between runs and were attended to at the boiler wash and inspection period, and classified repairs made after the engine had gone approximately 35,000 miles, or about every eighteen months. These last repairs were made at Readville, Massachusetts (R., 264, 189, 224). All engines operating in New York underwent a boiler wash every thirty days, and also a thirty day inspection (R., 209). To say the engine was not withdrawn from service is to say that only once every eighteen months such an engine was withdrawn when undergoing a complete dismantling at Readville.

Respondent's work on other occasions

Respondent had been in the employ of petitioner for nearly a year, at Maybrook, working six days a week (R., 105, 129). For the first eight or nine months he was a wiper of outgoing engines, sometimes in the roundhouse, sometimes outside (R., 106, 129, 130). At the time of the accident he was classified as a truck operator, under the labor foreman, in the unskilled labor gang. He had no engines and no jobs generally assigned to him, being called upon to do whatever work was required. For instance, whenever the men working on the engines needed a truck they would call for him (R., 107, 146). Respondent reported to Hessberger, his foreman (R., 135). Defendant's Ex. A (R., 448) shows the kind of truck he operated—an electric crane for picking up and moving objects (R., 131, 142-148).

With the truck used for various purposes, he would lift castings, bring material to the engines, such as grease, pull

down grease cups, assist in the adjustment of couplers on locomotives, fix brake shoes and pressure tanks, take drive shafts (but never driving wheels) off hot locomotives to the machine shop, carry driving rods on the truck, remove and replace engine pumps, assist in removing and replacing cylinder heads on engines, in moving side and main rods of engines to the cleaning vat and to the machine shop, and from the machine shop back to the engines, assist in removing and replacing drawbars between engines and tenders, at times handling heavy material. (For details see R., 106-109, 142-149, 183, 215-219, 261.) He had to do with all the engines (R., 107).

There were usually two electric trucks at the terminal, and respondent almost always used one of them (R., 108, 216). but the unskilled labor gang, to which respondent belonged, also cleaned up around the property, handled wheels, cleaned windows, operated coal pockets, dumped coal, ran the turntable (R., 261).

On the day in question respondent was the only operator on duty, so all heavy moving and lifting must have been done by him (R., 149).

From this description of his duties we see respondent engaged mostly with a truck, very often carting heavy material, at times concerned with engines withdrawn from service, at other times concerned with engines not so withdrawn. When working without a truck it is clear that he might well have no relation to transportation, as for instance, when he cleaned windows. Sometimes, "what he produced was not used or intended to be used, directly or indirectly, in the transportation of anything." *Chicago & North Western Ry. Co.* v. *Bolle, supra.* Furthermore, it

expressly appears that he had no general assignment to give character to his work as a whole.

Respondent went on duty about 8 o'clock in the morning, the accident happened about 11:30. He did some work with the truck, but the only definite testimony as to the day in question is that for two hours or more prior to the accident he was engaged solely with the main pair of driving wheels of engine 3221, and he did not know, upon the completion of this particular work, what he would next do (R., 145), although it turned out that he assisted to lift a pump rack up in position on an engine, and that is all we have (R., 119).

IV

Specification of Errors

(1) The Trial Court erred in denying petitioner's motion, made at the end of plaintiff's case, to dismiss the complaint on the ground that he had failed to prove interstate commerce, had failed to prove that he came under the Federal Employers' Liability Act at the time and place of the accident, that the evidence showed he was not engaged in such commerce at such time and place, that the engine had been withdrawn from service, that he was engaged in repair work with that engine at that time, that he was not engaged in commerce or movement in any way (R., 244, 245).

(2) The Trial Court erred in finding and holding that the engine was an instrumentality of interstate commerce, that it was not withdrawn from the service, but that roundhouse repairs were being made, and that during that time

it continued in the service and was an instrumentality of interstate commerce, and the plaintiff at the time was engaged in interstate commerce work upon an instrumentality of interstate commerce that had not been permanently withdrawn from the service (R., 245).

(3) The Trial Court erred in denying petitioner's motion for the direction of a verdict in its favor, made at the end of the entire case, on the ground of failure of proof that plaintiff was engaged in interstate commerce (R., 338, 339).

(4) The Trial Court erred in denying defendant's motion to go to the jury on the question of interstate commerce (R., 338).

(5) The Trial Court erred in its charge to the jury wherein it said that the plaintiff and defendant, as a matter of law, were engaged in interstate commerce, and plaintiff was entitled to the benefit of the Federal Employers' Liability Act (R., 340).

(6) The Trial Court erred in denying defendant's motion to set aside the verdict and for a new trial upon the exceptions in the judge's minutes, that the verdict was contrary to the evidence, contrary to the law, and on the further ground of the exceptions taken to the ruling on the question of interstate commerce (R., 354, 355).

(7) The Court of Appeals erred in holding that plaintiff was engaged in interstate commerce.

V

ARGUMENT

Summary of Argument

POINT A

THE PARTICULAR SERVICE PERFORMED BY RESPONDENT AT THE TIME OF HIS INJURY WAS REPAIR OF A LOCOMOTIVE WITHDRAWN FROM TRANSPORTATION SO THAT NEITHER THE INSTRUMENTALITY NOR THE CHARACTER OF THE WORK COULD BE INTERSTATE.

POINT B

THE CHARACTER OF THE WORK WHICH RESPONDENT DID AT OTHER TIMES IS IMMATERIAL.

POINT C

AT THE MOST RESPONDENT PRESENTED A FACT QUESTION WHICH SHOULD HAVE BEEN SUBMITTED TO THE JURY.

POINT A

The particular service performed by respondent at the time of his injury was repair of a locomotive withdrawn from transportation so that neither the instrumentality nor the character of the work could be interstate.

As we have said the Court of Appeals treated the repair of a particular engine as immaterial. We think this was error, for while the task or service will not be split into particular acts, on the other hand, the immediate task, the group of acts of service with a unity of purpose, separate and distinct from other groups with other purposes, is determinative.

In *Minneapolis & St. Louis R. R. Co.* v. *Winters*, 242 U. S. 353, the engine was withdrawn for only three days. Both before and after the accident it was engaged in mixed commerce. "An engine as such is not permanently devoted to any kind of traffic * * *" (p. 356). The character of the engine depends upon its employment at the time (p. 357). Please see also opinion of Justice McKenna in *Erie R. R. Co.* v. *Collins*, 253 U. S. 77, at p. 84. A failure to show the character of the rolling stock results in disaster. *B. & O. R. R. Co.* v. *Branson*, 242 U. S. 623. This is because rolling stock "is not permanently devoted to any kind of traffic." The time of withdrawal from use is material on the question of separation from movements that constitute transportation, and the separation gives character to the employment as not being in commerce if not immediate to it. *Chicago, K. & S. Ry. Co.* v. *Kindlesparker, supra.*

Some doubt existed as to the character of an engine exclusively devoted to interstate commerce until the decision of this Court in *Industrial Commission* v. *Davis, supra,* where it was assumed that the engine was sent from exclusive employment in interstate commerce to the repair shops, and after the repairs were finished the engine was finally put into the same kind of service. Notwithstanding this exclusiveness, when the equipment is out of use, withdrawn for repairs, when the duration of withdrawal is for several days at least, when there is a withdrawal from service and placement in new relations, then it cannot be said that such equipment partakes of the character of interstate transportation. It follows, therefore, that persons employed upon such equipment are not employed in interstate transportation. This we take it is the holding of *Industrial Commission* v. *Davis, supra.*

Engine 3221 was out of service for twelve days. Part of it was in the roundhouse, part in the Whiting Hoist building, and part in the machine shop. The fire was dumped, and during this time it was "a useless thing, incapable of allocation to commerce of any kind." (Dissenting opinion of Judge O'Brien in the Court of Appeals in the case at bar). When we also take into consideration the nature and extent of the repairs during the period of withdrawal we are forced to the conclusion that neither the character of the instrumentality nor the character of the employment was immediate to transportation.

This case does not involve a car waiting to make a trip outside of the State (*Johnson* v. *Southern Pacific Co.,* 196 U. S. 1); or engaging in a move preliminary to such a trip (*Norfolk & Western Ry.* v. *Earnest,* 229 U. S. 114; *Grand Trunk Ry. Co.* v. *Lindsay,* 233 U. S. 42; *Phila. & Read. Ry.*

Co. v. *Hancock*, 253 U. S. 284). Respondent's employment was not an act of preparation in the sense contemplated in *Nor. Car. R. R. Co.* v. *Zachary*, 232 U. S. 248. It was not an engine on which running repairs were being made, not withdrawn from service but delayed (*Walsh* v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1, commented on in *New York Cent. R. Co.* v. *Marcone*, 281 U. S. 345, 350; *Great Northern Ry.* v. *Otos*, 239 U. S. 349; *Erie R. R. Co.* v. *Szary*, 253 U. S. 86; *New York Cent. R. Co.* v. *Marcone*, *supra*, at p. 350). Certainly the locomotive was not actually running between States (*Seaboard Air Line* v. *Moore*, 228 U. S. 433).

It was not the completion of an interstate trip (*B. & O. S. W. R. R.* v. *Burtch*, 263 U. S. 540). It was not taking an engine from one State to another for purpose of repair. *Chicago, Rock Island Ry.* v. *Wright*, 239 U. S. 548. It was not a mere interruption of movement. The service does not so closely relate to interstate transportation as to be practically a part of it. *Del., Lack. & West. R. R.* v. *Yurkonis*, 238 U. S. 439. It was not repairing or keeping in usable condition an instrumentality then in use in any commerce. *Shanks* v. *Del., Lack. & West. R. R.*, 239 U. S. 556, 559, 560; *Ill. C. R. Co.* v. *Cousins*, 241 U. S. 641. We fail to find any direct relation to interstate transportation. One interstate movement had terminated, another had not yet begun. The employment was too distant to be a part of or to have close or direct relation to interstate transportation. *Chi., Burlington & Q. R. R.* v. *Harrington*, 241 U. S. 177; *New York Central R. R. Co.* v. *White*, 243 U. S. 188, 192; *Lehigh Valley R. R. Co.* v. *Barlow*, 244 U. S. 183.

Regardless of the kind of facility it is always necessary to show "use" in interstate transportation. In dealing with repair of tracks or bridges we have a permanent de-

votion which satisfies the test except in construction cases like *New York Central R. R. Co.* v. *White, supra.* In dealing with rolling stock, on the other hand, the determination of "use" involves elements of time, nature and extent of labor, place of repair, separation from such transportation. *Erie R. R. Co.* v. *Collins, supra,* involved work on pump house facilities; *Pedersen* v. *Del., Lack. & West. R. R.,* 229 U. S. 146, involved repair of a bridge; *New York Central R. R. Co.* v. *Winfield,* 244 U. S. 147, was the case of a section laborer assisting in the repair of main line track; *New York Cent. R. R. Co.* v. *Porter,* 249 U. S. 168, was that of a laborer engaged shoveling snow between the track and the platform; *Phila. B. & W. R. R. Co.* v. *Smith,* 250 U. S. 101, was that of an employee assisting in the work of bridge carpenters; *Kinzell* v. *Chicago, M. & St. P. Ry. Co.,* 250 U. S. 130, was that of an employee engaged in spreading earth to keep a track open for traffic; *So. Pac. Co.* v. *Industrial Accident Comm.,* 251 U. S. 259, was that of a lineman engaged in wiping insulators supporting main wire in use at the time. Such cases are readily distinguishable because of the "repairing or keeping in usable condition a roadbed, bridge, engine, car or other instrument then in use in such transportation." *Shanks* v. *Del., Lack. & West. R. R., supra,* at p. 560.

POINT B

The character of the work which respondent did at other times is immaterial.

Whether we look at the character of the instrumentality or the particular service, or the character of the general work, the old question presents itself for solution, whether

respondent was "engaged in interstate transportation or in work so closely related to such transportation as to be practically a part of it." *Chicago & North Western Ry. Co.* v. *Bolle, supra.* Notwithstanding this recent decision, because "a precise ruling, one that enables an instant and undisputed application, has not been attempted to be laid down," and because "we are brought to a consideration of degrees" (*Industrial Commission* v. *Davis, supra,* at pp. 185, 187), we here attempt a review of the law with special reference to the facts of our case to show that the character of the work he did at other times is immaterial.

The circumstance that respondent was engaged in interstate transportation on other occasions does not, in and of itself, make any difference as is clear from the opinion of Mr. Justice Sutherland in the *Bolle* case. This practical sense point of view in the interpretation of the Act, this confinement to particular service, runs through the decisions. In *St. Louis, San Francisco & Texas Ry.* v. *Seale,* 229 U. S. 156, a clerk went through a yard to mark the cars for the switching crew. Although his duties related to both kinds of traffic the opinion by Mr. Justice Van Devanter does not discuss his general work but relies solely upon the proof that the train in question was interstate and the transportation had not ended. In *Ill. Cent. R. R.* v. *Behrens,* 233 U. S. 473, a member of a switching crew, hauling a drag of intrastate cars, was held to be engaged in intrastate commerce, although his general work extended to both. In *Shanks* v. *Del., Lack. & West. R. R., supra,* Shanks was altering the location of a fixture in a machine shop. Mr. Justice Van Devanter said the usual work was immaterial (p. 558). In *Chicago, K. & S. Ry. Co.* v. *Kindlesparker, supra,* the plaintiff was a helper in the shops, at times acted as a fireman, but this Court concerned itself

only with his repair work on an engine at the time he suffered injury. Finally, in *Chicago & North Western Ry. Co.* v. *Bolle, supra,* respondent had supplied engines with coal and water, fired live engines, turned a turntable, but the character of this work was immaterial.

Congress did not legislate as to general work although it had good reasons for doing so (*Ill. Cent. R. R.* v. *Behrens, supra,* at p. 477). This, we take it, was back of the expression of Mr. Justice Brandeis in his dissenting opinion in *New York Central R. R. Co.* v. *Winfield, supra,* at p. 163.

Neither previous nor future employment is of any importance. *Ill. Cent. R. R. Co.* v. *Behrens, supra,* at p. 478; *Chi., Burlington & Q. R. R.* v. *Harrington, supra,* at pp. 179, 180; *Southern Railway Co.* v. *Puckett,* 244 U. S. 571, 574. Mere expectation of interstate work in the immediate future does not bring a case within the act. *Erie Railroad Company* v. *Welsh,* 242 U. S. 303; *Minneapolis & St. Louis R. R. Co.* v. *Winters, supra,* at p. 357. One separate and distinct service is not to be made an incident to or subordinate to another separate and distinct service. *Illinois Central R. R. Co.* v. *Peery,* 242 U. S. 292.

Respondent was performing a separate and distinct service, had been for two hours or more, in connection with an engine withdrawn from service. It was not like carrying material to a bridge to repair it (*Pedersen* v. *Del., Lack. & West. R. R., supra,* at p. 152), or taking an engine from a roundhouse to a track to haul an interstate train (*Norfolk & Western Ry.* v. *Earnest, supra*), or handling a car waiting to be moved in an interstate run (*Johnson* v. *Southern P. Co., supra*). Each was clearly a minor task essentially a part of a larger one.

The fact situation in the case at bar is obviously very different from that of *New York Central R. R.* v. *Carr*, 238 U. S. 260, where a brakeman placed two intrastate cars on a side-track so that the interstate train might proceed. The act was done to further the later work. In *Pennsylvania Company* v. *Donat*, 239 U. S. 50, it was necessary to remove two empty cars to complete an interstate movement. In *Southern Railway Co.* v. *Puckett, supra,* plaintiff assisted in raising a wrecked car to extricate an employee but for the immediate purpose of opening a way for interstate traffic. In *Louisville & Nashville R. R. Co.* v. *Parker*, 242 U. S. 13, a fireman moved an empty car to reach and move an interstate car. These references show how close the acts were to actual interstate transportation, and the interstate purpose.

So the work in *Kinzell* v. *Chicago, M. & St. P. Ry. Co., supra,* had the double purpose of spreading earth to widen an embankment and to keep the track open for traffic. So the service of a flagman at a public crossing concerns the safety of both commerces, and safety of track. *Phila. & Read. Ry. Co.* v. *Di Donato*, 256 U. S. 327. None of these cases departs very far from the clear situation in *Phila. & Read. Ry. Co.* v. *Polk*, 256 U. S. 332, where a member of a crew handled a draft of freight cars, some interstate, some intrastate.

Furthermore, to continue this same negative line of reasoning, the work respondent was doing at the time did not partake of the character of his work as a whole. It was more an incident of one part than another. Illustrations readily occur showing the difference—leaving the yard at the close of the day's work (*Erie R. R. Co.* v. *Winfield*, 244 U. S. 170); remaining on premises after completion of

work (*Erie R. R. Co.* v. *Szary, supra; New York Cent. R. Co.* v. *Marcone, supra,* at p. 350). In these cases we find merely incidents of interstate employment, intimate relation with it, interstate employment a necessary objective, possibly a temporary absence from usual place and kind of work. A mere change of physical position is not, of course, determinative (*Nor. Car. R. R. Co.* v. *Zachary, supra,* at p. 260). But in the case at bar we have a great deal more than that, and affirmative as distinguished from negative conduct.

POINT C

At the most respondent presented a fact question which should have been submitted to the jury.

The case may be considered from two angles:

1. Does the evidence fail to show respondent was engaged in interstate transportation when injured?

2. Does the evidence tend to show respondent was not engaged in interstate transportation?

If the evidence fails to sustain respondent's burden there can be no recovery as a matter of law. If the evidence even tends to show he was not so engaged then the question should have been given to the jury. We submit that we have shown a failure of proof and that, therefore, the trial court should not have ruled, as a matter of law, that respondent was engaged in interstate commerce.

But if different inferences can be drawn by reasonable men from the facts, even though the evidentiary facts are

not in controversy and the ultimate conclusion is a mixed finding of law and fact, then the issue is one for the jury.

Such treatment was approved by this Court in the following cases among others:

Seaboard Air Line v. *Moore, supra;*
Nor. Car. R. R. Co. v. *Zachary, supra;*
Penna. Co. v. *Donat, supra;*
Chi. & Rock Island R. R. v. *Devine,* 239 U. S. 52;
Seaboard Air Line v. *Koennecke,* 239 U. S. 352, 355;
Southern Railway v. *Lloyd,* 239 U. S. 496;
Pecos & Northern Ry. v. *Rosenbloom,* 240 U. S. 439;
Louisville & Nashville R. R. Co. v. *Parker, supra;*
New York Cent., etc. R. R. Co. v. *Tonsellito,* 244 U. S. 360.

CONCLUSION

The test is the particular service or task at the particular time. The word "service" refers to the immediate task at hand, and this Court has not hesitated to split up a day's work. This group of acts was separable from other groups by a long period of time and by definite, further, particular incidents of exertion. The character of his work at other times is immaterial.

To call respondent's work "plant service" adds nothing to the solution of the problem. At the time of his injury he did not act with reference to the maintenance, repair, or construction of the plant. His acts of service can be referred

only to a withdrawn engine. He had nothing to do with its operation, being far removed from that. Both the character of respondent's work at the time involved, and the character of the instrumentality upon which that work was performed force the conclusion that he was not engaged in interstate transportation or in work so closely related to it as to be practically a part of it.

We, therefore, respectfully submit that the judgment of the Court of Appeals of the State of New York should be reversed.

JOHN M. GIBBONS,
Counsel for Petitioner.

EDWARD R. BRUMLEY,
FLEMING JAMES, JR.,
Of Counsel.

APPENDIX A

Federal Employers' Liability Act.

Act of April 22, 1908, c. 149, §1, 35 Stat. 65; U. S. C. A. Title 45, c. 2, §51.

"LIABILITY OF COMMON CARRIERS BY RAILROAD, IN INTERSTATE OR FOREIGN COMMERCE, FOR INJURIES TO EMPLOYEES FROM NEGLIGENCE. Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States, or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury *while he is employed by such carrier in such commerce,* or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and; if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment." (italics ours).

APPENDIX B

Act of June 7, 1924, c. 355, §2, 43 Stat. 659, 45 U. S. C. A. §23, reads as follows:

> "It shall be unlawful for any carrier to *use or permit to be used* on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, and unless said locomotive, its boiler, tender, and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of sections 28, 29, 30, and 32 and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for." (italics ours).

FILE COPY

AUG 8 1931

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1931.

No. 263.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

CLARENCE BEZUE.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THOMAS J. O'NEILL,
Attorney for Plaintiff-Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
Of Counsel.

CHARLES WATSON RUSSELL, Printer

SUBJECT INDEX.

	PAGE
Brief in Opposition to Petition for Writ of Certiorari	1-13
I.—The Opinions of the Courts Below	1
II.—Jurisdiction	2
III.—Statement of the Case	2-4
IV.—Specifications of Errors	4-5
V.—Argument	5
A. The evidence established that the plaintiff below was engaged in interstate commerce as matter of law because the essential facts of his general employment at the time of his injury are undisputed and indisputable	5
B. He was an unskilled laborer, plant service employee, at defendant's maintenance roundhouse, engaged in his general unassigned work so closely related to interstate commerce as to be a part of it	5
C. He was engaged in aiding to maintain in efficient condition as part of his general maintenance and plant service, for effective use, a locomotive used exclusively in interstate commerce while it was undergoing a statutory boiler wash and incidental maintenance repairs	5-6

PAGE

D. He was engaged in aiding to maintain in efficient condition for effective service in interstate commerce a locomotive which in this particular case was an instrumentality of interstate commerce not withdrawn from such commerce 6

Conclusion 13

TABLE OF CASES CITED.

Atkins *v.* Payne, 109 Ka. 477, certiorari denied, 257 U. S. 658 11

D. L. & W. R. R. Co. *v.* Yourkonis, 220 Fed, 429, page 433; writ of error dismissed 238 U. S. 439 ..... 4, 5, 12

Erie R. R. Co. *v.* Collins, 253 U. S. 77 ..... 5, 8

Erie R. R. Co. *v.* Szary, 253 U. S. 86 ..... 5, 8

Erie R. R. Co. *v.* Welsh, 242 U. S. 303 13

Erie R. R. Co. *v.* Winfield, 244 U. S. 170 8

Flack *v.* D. L. & W. R. R. Co., 45 Fed. (2) 683, certiorari denied 6

Hiser *v.* Davis, 234 N. Y. 300 ..... 5, 9

Illonardo *v.* Erie R. R. Co., 103 N. J. L. 4 .... 5, 8

Knowles *v.* N. Y., N. H. & H. R. R. Co, 223 N. Y. 513 9

Lusk *v.* Bandy, 76 Okla. 108; 184 Pac. 144 6-10

Matter of Guida, 183 N. Y. App. Div. 822 aff'd. 224 N. Y. 712 ..... 5, 9

Minneapolis & St. Louis R. R. Co. *v.* Winters, 242 U. S. 353 11

PAGE

N. Y. C. R. R. Co. *v.* Carr, 238 U. S. 260 ..... 9, 12
N. Y. C. R. R. Co. *v.* Marcone, 281 U S. 345 .... 5, 8
N. Y. C. R. R. Co. *v.* Porter, 249 U. S. 168 13
Oglesby *v.* St. Louis & S. F. R. R. Co., 218 Mo. 79; certiorari denied 277 U. S. 587 .....6, 7, 11
Pederson *v.* D. L. & W. R. R. Co., 229 U. S. 146 13
Salvo *v.* N. Y. C. R. R. Co., 216 N. Y. App. Div. 592 ..... 5, 9
So. R. R. Co. *v.* Plunkett, 244 U. S. 371 13
St. Louis R. R. Co. *v.* Seale, 229 U. S. 156 8

TABLE OF STATUTES CITED.

Act of Cong., April 22, 1908, C. 149, Sec. 1, 35 Stat. 65 2
Act of Cong., April 5, 1910, C. 143, Sec. 1, 36 Stat. 291 2

Supreme Court of the United States

OCTOBER TERM, 1931.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Petitioner, vs. CLARENCE BEZUE,	No. 263.

Brief in Opposition to Petition for Writ of Certiorari.

I.

The Opinions of the Courts Below.

The New York Court of Appeals opinions are reported in 257 N. Y. 480 (R., 511-519).

The New York Appellate Division, Second Department, wrote no opinion. Its memorandum decision is reported in 232 N. Y. App. Div. 840 (R., 508).

The Trial Court (Mr. Justice John E. Mack) wrote no opinion (R., 500).

II.

Jurisdiction.

The plaintiff below does not contend that this Court is without jurisdiction to review the judgment herein. The sole question is whether or not this is a case in which this Court should exercise its supervisory powers to review the judgment below.

III.

Statement of the Case.

This action was instituted to recover damages for personal injuries, under the Federal Employers' Liability Act (Act of Con., April 22, 1908, C. 149, Sec. 1, 35 Stat. 65, and Act of April 5, 1910. C. 143, Sec. 1, 36 Stat. 291).

The issues came on for trial before Mr. Justice John E. Mack and a jury sitting in the New York State Supreme Court, Putnam County, on September 4th, October 2nd, 3rd, 9th and 10th, 1930, and resulted in a verdict for the plaintiff in the sum of $60,000 (R., 1,453).

The Appellate Division of the New York Supreme Court, Second Department, directed that unless the plaintiff stipulate to reduce the verdict to the sum of $50,000, in which event the judgment and order appealed from were unanimously affirmed (232 N. Y. App. Div. 840) that the judgment and order be reversed upon the law and facts and a new trial granted. The plaintiff stipulated to accept this reduction (R., 1,503-507), and the judgment as so modified was unanimously affirmed.

The defendant as matter of right then appealed to the New York Court of Appeals, and that Court af-

firmed the judgment and order of the Appellate Division (257 N. Y. 480; R., 520-521) and the judgment and order herein sought to be reviewed were thereafter entered on the 2nd day of June, 1931 (R., 520-521).

* * * * * * *

Plaintiff, a married man, 31 years old, had been engaged in the labor gang at defendant's maintenance roundhouse at Maybrook, N. Y., for a period of approximately a year, first as an engine wiper, and then at times operating a portable electric truck, and working as a member of defendant's unskilled labor-gang at this maintenance roundhouse.

On September 2, 1929, plaintiff was injured while he was helping to roll a pair of wheels belonging to defendant's engine No. 3221, which had been for two years exclusively used in interstate commerce (R., 289-291) and which engine could not get back to defendant's main line in New England without being in interstate commerce, whether it ran light, hauled a train; or was hauled (deadheaded) over the New York-Connecticut State line, and which engine actually continued in interstate service two days after the accident (R., 289-291) and has continued ever since in such service, because it was of the 2-10-2 Sante Fe type used for freight service only in heavy cross-mountain interstate trips between Maybrook, N. Y. and points in Connecticut (R., 269, 294) and which engine at the time of the accident was undergoing a statutory boiler wash (R., 270) and in service maintenance repairs (R., 245) of which the moving of the wheels was an incident (R., 338). Plaintiff was thrown over the journal of said wheels on his back on the hard packed cinders between the tracks when the foreman without warning kicked a block from under the wheels, causing them to roll towards plaintiff.

We will not further refer to the undisputed facts because to do so would require their being set forth prac-

tically verbatim." We have, however, marshalled such facts in their proper place under the title "Argument" in this brief.

IV.

Specifications of Errors.

The Trial Court, the Appellate Division and the New York Court of Appeals all held that the plaintiff, as matter of law, was engaged in interstate commerce at the time he was injured.

The Trial Court so concluded for the reason that it considered this engine No. 3221 was an instrumentality of interstate commerce and not withdrawn from such commerce. The Court of Appeals, in its opinion, stated affirmatively that it considered it unnecessary to decide this question because it held that, upon the undisputed evidence, plaintiff was a plant service employee, engaged in the defendant's maintenance roundhouse, and that his service to defendant involved constant interstate commerce maintenance repair and inspection, and that he therefore was at all times necessarily engaged interstate commerce.

As heretofore stated, the Appellate Division did not write any opinion.

The record presents no disputed evidence as to the plaintiff's work, and no divergent inferences are deducible from the evidence; and, therefore, it was surely a matter of law as to whether or not he was engaged in interstate commerce, and, as long as such evidence clearly showed that the plaintiff was engaged in interstate commerce, it is immaterial upon what theory of law the various Courts herein have based their respective decisions. (*D. L. & W. R. R. Co.* v. *Yurkonis*, 220 Fed. 429, page 433, Ward, *J.*: "We think this was a

right conclusion for the wrong reason." Writ of error dismissed, 238 U. S. 439) and such differences of opinion certainly should not constitute a reviewable question, if plaintiff below was, in the opinion of this Court, actually engaged in interstate commerce, as matter of law, even, if for reasons not found by the Courts below.

V.

Argument.

A.

The evidence established that the plaintiff below was engaged in interstate commerce as matter of law because the essential facts of his general employment at the time of his injury are undisputed and indisputable.

B.

He was an unskilled laborer, plant service employee, at defendant's maintenance roundhouse, engaged in his general unassigned work so closely related to interstate commerce as to be a part of it (*N. Y. C. R. R. Co.* v. *Marcone*, 281 U. S. 345; *Erie R. R. Co.* v. *Collins*, 253 U. S. 77; *Erie R. R. Co.* v. *Szary*, 253 U. S. 86; *Illonardo* v. *Erie R. R. Co.*, 103 N. J. L. 4; *Salvo* v. *N. Y. C. R. R. Co.*, 216 N. Y. App. Div. 592; *Matter of Guida*, 183 N. Y. App. Div. 822, aff'd. 224 N. Y. 712; *Hiser* v. *Davis*, 234 N. Y. 300).

C.

He was engaged in aiding to maintain in efficient condition as part of his general

maintenance and plant service, for effective use, a locomotive used exclusively in interstate commerce while it was undergoing a statutory boiler wash and incidental maintenance repairs (*Lusk v. Bandy*, 76 Okla. 108).

D.

He was engaged in aiding to maintain in efficient condition for effective service in interstate commerce a locomotive which in this particular case was an instrumentality of interstate commerce not withdrawn from such commerce (*Oglesby* v. *St. Louis & S. F. R. R. Co.*, 218 Mo. 79; certiorari denied 277 U. S. 587; *Flack v. D. L. & W. R. R. Co.*, 45 Fed. (2) 683, certiorari denied.

Bezue was an unskilled laborer engaged in defendant's maintenance roundhouse (R., 175-279, 147-148, 335) located at the west end (70 miles across the New York-Connecticut State line, R., 311) of defendant's system and its only interstate commerce route from its main line and branches in New England to New York and was thus at all time an interstate commerce employee.

He "was engaged in a plant service," as the New York Court of Appeals said (R., 513). An almost similar expression to *petitioner's admission* in its brief in the New York Appellate Division (232 N. Y. App. Div. 840) at Page 21, "In substance it was plaintiff's work to keep locomotives in good repair."

What locomotives? Freight locomotives, used in petitioner's cross-mountain, New York-Connecticut, inter-

state service, since, only one or two smaller locomotives were used in a passenger service of one train daily between Maybrook and Poughkeepsie, N. Y. (Plaintiff's Exhibit 15A, 15B, 16, R., 464-470; R., 149, 267, 271-273, 280).

This Maybrook, N. Y., maintenance roundhouse was for the stabling and daily maintenance of such freight locomotives during daily inspection and maintenance up-keep; and their regular thirty day statutory boiler washes and maintenance up-keep, whereas for their complete overhauling, rebuilding and general repair work at the end of approximately every eighteen months or after the locomotive had accumulated approximately 35,000 miles of service the petitioner maintained at Readville, Mass. a general out-of-service repair shop (R., 245-246, 337-339).

This arrangement, we believe, to be identical with the situation arising in *Oglesby* v. *R. R. Co.*, 218 Mo. 79, certiorari denied 277 U. S. 584, where the Missouri Court emphasized the fact, that the repairs were made in a roundhouse where maintenance repairs were made, and that the railroad company maintained a repair shop at a distant point where *general, extensive and heavy repairs and alterations were made.*

The evidence in the case at bar established *that no complete dismantling or general, or out-of-service repair jobs were done at Maybrook, N. Y.* (R., 246).

What were plaintiff's general duties in this maintenance roundhouse?

At times he operated a small portable electric truck with a crane (R., 470) made himself generally useful about the premises, either with the truck and crane or in person, in aiding or personally doing general maintenance work in oiling locomotives; pulling down grease boxes and getting grease; and greasing the locomotives;

adjusting couplers; adjusting brake shoes; pressure tanks; taking driving shafts off, and putting them on; keeping locomotives continually in service in interstate commerce; pulling up springs; oiling springs; greasing collars; fixing draw-bars; changing pumps and pilots; removing and replacing air-compressors and brackets and water pumps; bringing material to the engines for maintenance repairs, removing and replacing pistons from engine cylinders and any and all work required about this maintenance roundhouse on such engines in the unskilled labor class (R., 145-147; 151; 190-196).

His work required from 20 minutes to a few hours (R., 151).

He was regularly unassigned, day in and day out (R., 147-148) and was so employed up to and at the time of the accident, since unskilled labor was used in rolling wheels (the identical job plaintiff was doing when injured) putting things in position for mechanics, cleaning windows, operating coal pockets; dumping coal and running the turntable (R., 335).

In fact, plaintiff worked, day in and day out, on hot or live engines ready for use and actually used immediately thereafter (R., 147, 148, 152). This was admitted by the petitioner in the Court of Appeals (Appellant's Brief, Pages 20-21).

Under this uncontroverted evidence Bezue was engaged as an unskilled laborer in defendant's maintenance roundhouse at Maybrook, N. Y. in work so closely related to interstate commerce as to be a part of it.

Erie R. R. Co. v. *Winfield,* 244 U. S. 170.
St. Louis R. R. Co. v. *Seale,* 229 U. S. 156.
Erie R. R. Co. v. *Collins,* 253 U. S. 77.
N. Y. C. R. R. Co. v. *Marcone,* 281 U S. 345.
Erie R. R. Co. v. *Szary,* 253 U. S. 86.
Illonardo v. *Erie R. R. Co.,* 103 N. J. L. 4.

Knowles v. *N. Y., N. H. & H. R. R. Co.*, 223 N. Y. 513.
Hiser v. *Davis*, 234 N. Y. 300.
Matter of Guida, 183 N. Y. App. Div. 822, affm'd. 224 N. Y. 712.
Salvo v. *N. Y. C. R. R. Co.*, 216 N. Y. App. Div. 592.

What Bezue was actually doing at the time of his injury we believe is immaterial, *as he might have been doing nothing at all* and still have been engaged in interstate commerce as matter of law as this Court said in *N. Y. C. R. R. Co.* v. *Carr*, 238 U. S. 260, "The question is not to be decided by considering the physical position of the employee at the moment of the injury."

Aside from the question of Bezue's being engaged in interstate commerce, as matter of law, by reason of his general unassigned employment at defendant's maintenance roundhouse, he was engaged in interstate commerce by reason of the fact that he was actually doing work incident to the thirty day statutory boiler wash (R., 270, 248, 338).

The particular locomotive (No. 3221) had been, was and still is used exclusively in interstate commerce. From September 3, 1927 to the day of the trial October 10, 1930, except when undergoing general out of service repairs and practically reconstruction at Readville, Mass., from September 2, 1927, to October 11, 1927; February 15, 1929 to March 27, 1929; and June 3, 1930, to July 1, 1930 (Petitioner's stipulation, R., 289, 290, 291; Plaintiff's Exhibit A 14, B. C. R., 458-462).

This particular locomotive had undergone similar boiler washes while being used exclusively in the Maybrook, N. Y. and Connecticut freight service on November 14, 1927, January 23, 1928; February 25, 1928;

April 2, 1928; May 8, 1928; June 10, 1928; July 17, 1928; September 5, 1928; October 11, 1928; November 26, 1928; May 3, 1929; June 10, 1929; July 17, 1929, and the one at the time of this accident, August 24, 1929. All of which were at the petitioner's maintenance roundhouse at Maybrook, N. Y. (R., 337).

There was nothing unusual about this boiler wash as they usually took from 3 to 6 days or more (R., 245) the moving of the wheels was incident to the boiler wash (R., 338), and petitioner's general maintenance supertendent testified *that as a matter of fact there were other engines in for boiler washes where the repairs were heavier,* and that the repairs on 3221 were not exceptional but common to this thirty day boiler wash period (R., 339, 340).

Such testimony was to be expected as this particular locomotive had been practically rebuilt on its last trip to defendant's out-of-service general repair shop at Readville, Mass. between February 15 and March 27, 1929, and had had three boiler washes with maintenance repairs in the interim on May 3, June 10 and July 17, 1929.

An employee injured while making a boiler wash on a locomotive used exclusively in interstate commerce is engaged in interstate commerce (*Lusk* v. *Bandy,* 76 Okla. 108; 184 Pac. 144). Why should doing work incident to the boiler wash change the character of the employment?

While the New York Court of Appeals did not deem it necessary in deciding this case to consider the question of this particular locomotive's character as an instrumentality of interstate commerce not withdrawn from such commerce, we believe, that it was at the time of plaintiff's injury such an instrumentality because of its uninterrupted exclusive use, the defendant's abso-

lute inability to use said locomotive for any other kind of commerce because of its peculiar type and that the fact that no matter how said locomotive was taken back to its main line in the State of Connecticut it must either take part in an interstate commerce movement or be a part of it.

The testimony also showed *that no out-of-service repairs were made at Maybrook, N. Y.*, and were only made at Readville, Mass., so that we have an identical situation in the case at bar with *Oglesby* v. *R. R. Co.*, 218 Mo. 79, where this Court denied certiorari, 277 U. S. 587, and a very similar situation to the case of *Atkins* v. *Payne*, 109 Ka. 477, where this Court also denied certiorari, 257 U. S. 658.

We are not concerned here with many of the decisions of this Court following its pronouncements in *Minneapolis & St. Louis R. R. Co.* v. *Winters*, 242 U. S. 353, where the opinion stated that "an engine as such is not permanently devoted to any kind of traffic, * * *. Its next work, so far as appears, might be interstate or confined to Iowa, as it should happen * * *."

Every case that we know of where this Court has rendered an opinion in relation to a locomotive as an instrumentality of interstate commerce has had in it facts justifying the conclusion that the locomotive might, although previously used in interstate commerce, be used in intrastate commerce on its next run after the accident.

There are no such facts in this record. In fact the facts are to the contrary. First, as to the peculiar type of locomotive. Second, as to its exclusive use for years before the accident, and as to its actual use after the accident, and third, the peculiar geographical situation of defendant's maintenance roundhouse being at the weste[illegible] end of its railroad system and only 70 miles

approximately from the New York-Connecticut State line prohibited this locomotive being anything else but an instrumentality of interstate commerce unless its services were completely dispensed with and they were not, as far as the record goes for on the date of the trial some 13 months after the accident it was still in this service.

As we understand the test laid down by this Court, it is that each case must be decided in the light of the particular facts proven with a view of determining interstate commerce, *N. Y. C. R. R. Co.* v. *Carr*, 238 U. S. 260, and we therefore will not discuss the cases cited in petitioner's brief believing them irrelevant because the questions here raised were not decided on anything like or near the *particular facts proven in the case at bar.*

D.

Petitioner's point B raises no question sufficient to warrant the granting of a writ of certiorari.

Petitioner has contended in the Courts below the same as here that plaintiff was not engaged in interstate commerce at all and yet tries to becloud the clear cut issue of law by suggesting "at the most the plaintiff presented a fact question which should have been submitted to the jury."

This argument has failed to impress any of the thirteen judges of the three courts below and we still believe it is absolutely untenable.

The fact that the judges of the various successive State courts may have differed in their reasoning as to the principle applicable does not cause a jury question to be presented. (*D. L. & W. R. R. Co.* v. *Yorkinus*, 220 Fed. 429, writ of error dismissed, 238 U. S. 439.)

Interstate commerce is never a question for the jury if the essential facts concerning employment are not in dispute, and admit no divergent inferences.

In such a case the Court is required to charge as to interstate commerce as matter of law.

N. Y. C. R. R. Co. v. *Portet*, 249 U. S. 168; *So. R. R. Co.* v. *Plunkett*, 244 U. S. 371; *Erie R. R. Co.* v. *Welsh*, 242 U. S. 303; *Pederson* v. *D. L. & W. R. R. Co.*, 229 U. S. 146.

Conclusion.

It is, therefore respectfully submitted that there is nothing shown by the petitioner in this case calling for the exercise by this Court of its supervisory powers to review the judgment of the Court of Appeals of the State of New York and petitioner's application for a writ of certiorari should be denied with costs.

THOMAS J. O'NEILL,
Attorney for Plaintiff-Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
Of Counsel.

FILE COPY

FILED
JAN 6 193
CHARLES ELMORE CRO
CLE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. 263.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

against

CLARENCE BEZUE,

Respondent.

RESPONDENT'S BRIEF.

THOMAS J. O'NEILL,
Counsel for Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
LEONARD F. FISH,
Of Counsel.

CHARLES WATSON RUSSELL, Printer

SUBJECT INDEX.

	PAGE
I.—The Opinions of the Courts Below	1
II.—Jurisdiction of this Court	2
III.—Statement of the Case	2
IV.—Argument	9
Summary of Argument	9
POINT A.—All the facts in this case upon which the question as to whether or not respondent was engaged in work so closely related to interstate transportation as to be a part of it, are undisputed, and thus only a question of law was and is presented, and it appearing conclusively that respondent was injured while so engaged it is immaterial upon which ground it is so held	9
POINT B.—Respondent at the time of his injury was an essential interstate transportation plant service employee, and then and at all times was engaged in servicing and maintaining interstate locomotives, and thus clearly his work was an essential part of interstate transportation	11
POINT C.—At the time the respondent was injured he was working on an interstate transportation instrumentality not withdrawn from service, and therefore the federal act applies	16
Conclusion	22

TABLE OF CASES.

	PAGE
C. & N. W. R. Co. *v.* Bolle, decided Nov. 23, 1931	11, 12
D. L. & W. R. R. Co. *v.* Yurkonis, 220 Fed. 429, Writ of Error dismissed, 238 U. S. 439	10
Erie R. R. Co. *v.* Welsh, 242 U. S. 303	10
Erie R. R. Co. *v.* Collins, 253 U. S. 77	14
Erie R. R. Co. *v.* Winfield, 244 U. S. 170	15
Illonardo *v.* Erie R. R. Co., 103 N. J. L. 4	13
Industrial Commission *v.* Davis, 259 U. S. 188	17
Knowles *v.* N. Y., N. H. & H. R. R. Co., 223 N. Y. 513	15
Law *v.* Illinois Central R. R. Co., 208 Fed. 869	9
Lusk *v.* Bandy, 76 Okla. 108	17
Minneapolis & St. L. R. Co. *v.* Winters, 242 U. S. 353	21
N. Y. C. R. R. Co. *v.* Porter, 249 U. S. 168	10
N. Y. C. R. R Co. *v.* Marcone, 281 U. S. 345	12
Oglesby *v.* St. L. & S. F. R. R. Co., 318 Mo. 79; certiorari denied, 277 U. S. 587	20
Pederson *v.* D. L. & W. R. R. Co., 220 U. S. 146	10
So. R. Co. *v.* Puckett, 244 U. S. 371	10
Shanks *v.* D. L. & W. R. R. Co., 239 U. S. 556	11
Salvo *v.* N. Y. C. R. R. Co., 216 N. Y. App. Div. 592	13
St. L. R. R. Co. *v.* Seale, 229 U. S. 156	15

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 263.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Petitioner,

AGAINST

CLARENCE BEZUE,
Respondent.

BRIEF ON BEHALF OF THE RESPONDENT, CLARENCE BEZUE.

I.

The Opinions of the Courts Below.

The opinions of the New York Court of Appeals are reported in *Bezue* v. *The New York, New Haven and Hartford Railroad Company*, 256 N. Y. 427, decided June 2, 1931 (R., 489-495).

The memorandum decision of the Appellate Division, Second Department, is reported in 232 N. Y. App. Div. 840 (R., 487).

The trial court wrote no opinion after the verdict, (R., 482) but in disposing of the motion to dismiss the complaint stated orally, upon the question as to whether

or not plaintiff was engaged in interstate transportation or work so closely related to it as to be a part of it, that:

> "Upon the authority of Law against the Illinois Central Railroad Company, 208 Federal Reporter, 869 (cited and not disapproved in the case of the *Industrial Accident Commission of the State of California* against *Davis*, 259 U. S. 182). I hold that the engine was an instrumentality of interstate commerce, that it was not withdrawn from the service but that roundhouse repairs were being made and that during that time it continued in the service and was an instrumentality of interstate commerce, and the plaintiff at the time was engaged in interstate commerce work upon an instrumentality of interstate commerce that had not been permanently withdrawn from the service" (R., 244-245).

II.

Jurisdiction of This Court.

Respondent admits the jurisdiction of the court in this case.

III.

Statement of the Case.

This is an action for personal injuries brought pursuant to the Federal Employers' Liability Act (Act of Cong. April 22, 1908 c. 149, Sec. 1, 35 Stat. 65, and Act of April 5, 1910, c. 143, Sec. 1, 36 Stat. 291). The issues came on for trial before a Judge and a jury in the Supreme Court, Putnam County, New York, in September and October, 1930, and resulted in a verdict in favor of the plaintiff and against the defendant for

$60,000 (R., 1, 352-355). The Appellate Division of the Supreme Court, Second Department, reversed the judgment and order and granted a new trial, unless plaintiff stipulated to reduce the verdict to the sum of $50,000, otherwise the judgment as modified and the order were unanimously affirmed. 232 N. Y. App. Div. 840. Plaintiff so stipulated (R., 1, 486). Thereafter petitioner appealed as of right to the Court of Appeals from the judgment in favor of the plaintiff, and also from the order of the Appellate Division modifying and reducing the judgment (R., 483, 484). The Court of Appeals affirmed the said judgment, and made a judgment and order of affirmance dated June the 3rd, 1931 (R., 495, 496).

The majority opinion of the Court of Appeals (R., 489-493) held in substance that the respondent was engaged in *an interstate transportation plant service*, and stated that respondent was *"engaged in interstate transporation or in work so closely related to it as to be practically a part of it"* (R., 492).

And that therefore it was

> *"unnecessary to determine whether at the time of the accident the locomotive being repaired had been so withdrawn from service that it was not in use in interstate commerce."*
>
> "There was no conflict in the evidence in regard to the services performed by the respondent. The Trial Court, therefore, properly decided as a matter of law that the respondent was covered by the act" (R., 493).

The dissenting opinion held in effect that the locomotive in question was withdrawn from commerce, and that the character of respondent's general employment was immaterial, and that respondent therefore was not engaged in interstate transportation or work so closely related as to be a part of it (R., 493).

The respondent, solely for the purpose of correcting *omissions in petitioner's statement of the facts,* will now briefly state such facts as respondent considers essential to the consideration of the case.

Facts.

Respondent at the time in question was employed by the petitioner as a member of an unskilled labor gang (R., 149, 216) at petitioner's maintenance roundhouse and interstate engine terminal at Maybrook, N. Y. (R., 149) where minor servicing locomotive repairs were made and boilers were washed on interstate engines (R., 188-189).

The attention of the Court is here called to the fact that when this type of interstate locomotives were withdrawn from service for general repairs and overhauling, such repairs were never made at Maybrook, but the *locomotive was then, and then only, put out of service* and deadheaded to Readville, Mass., where it was dismantled and completely repaired; and then after it was inspected, it was first placed in storage before being returned to service (R., 189, 213), and such locomotive was never withdrawn from interstate transportation until it was thus withdrawn from interstate transportation for the purpose of sending it to petitioner's *"back-shop"* at Readville, Mass., where these heavy repairs were made on this type of engine.

It is very important to note that about six months before this accident, this particular engine, in connection with which respondent had been working for about two or three hours before he was injured, was taken out of service and sent to petitioner's *"back-shop"* at Readville, Mass., to be completely repaired and overhauled, and after it was inspected and stored it was not returned to service until March 27, 1929, about five months before the accident (R., 363), and from that

time on up to the time of the accident it was never taken out of service, but was merely sent into this Maybrook round house terminal for its customary boiler washes and incidental repairs upon three occasions, to wit: May 3rd, June 10th and July 17th, and at the time of the accident was undergoing one of its boiler washes and the incidental repairs connected therewith (R., 458-460-464-468).

This Maybrook roundhouse was located only about seventy miles west of the New York-Connecticut State line (R., 244) and Maybrook was the westerly terminal of the road, and in order to do its exclusive interstate work, it day in and day out was running across the New York-Connecticut State line to work upon and get upon the main line, except when it was in at Maybrook for maintenance repairs and washes (R., 244).

Furthermore it appears that *very frequently heavier maintenance repairs* were made at Maybrook during boiler washes than the work that was being done upon this locomotive at this time (R., 265).

Most of the time, respondent operated a small portable electric truck with a crane attached thereon in working on and around the defendant's "hot" interstate locomotives in this roundhouse terminal, and he also made himself generally useful in and about this interstate roundhouse and terminal, either with the truck and crane or in person, in aiding or personally in general maintenance work, of oiling locomotives; pulling down grease boxes, getting grease and greasing locomotives; adjusting couplers; adjusting brake shoes; pressure tanks; taking off and putting on locomotive drive shafts; keeping locomotives continually in service in interstate transportation; greasing collars; fixing draw bars; adjusting pumps and pilots; removing, replacing and adjusting locomotive air compressors, locomotive brackets and water pumps; bringing material for hot interstate engines; removing and

replacing pistons from cylinders of engines (R., 106-111; 142-149; 178-179) and any and all unskilled labor work required in and about the petitioner's interstate locomotives in this roundhouse.

These various jobs, whatever might be requested at any time, required from twenty minutes to a few hours (R., 111).

Keeping defendant's "hot" active locomotives in good maintenance and repair (R., 109). This was his regular unassigned work day in and day out (R., 109) and he was so employed up to and at the very moment of the accident.

Unskilled labor also was used in rolling wheels, the identical job plaintiff was assisting in doing when injured; putting things in position for mechanics and running the turn-table (R., 261).

The record shows beyond dispute that practically all of the engines coming in and out of that roundhouse were used exclusively in interstate commerce; a very few in mixed commerce, and only one or two in intrastate commerce (One passenger train daily from Maybrook, N. Y. to Poughkeepsie, N. Y.) (R., 109, 207, 210-213) and Plaintiff's Exhibits 15A, 15B, 16, R., 366-446).

The particular engine involved in plaintiff's accident was used exclusively for interstate transportation from September 3, 1927, or two years before plaintiff was injured, (See stipulation R., 224-226) and its actual interstate movement was only interrupted nine days before plaintiff was injured for its regular U. S. statutory 30-day boiler wash (R., 262, 263) and this particular engine, involved in respondent's accident, immediately after its boiler wash and incidental repairs were concluded (2 days after respondent's injury) continued its exclusive interstate commerce work up to the date of the trial.

Plaintiff worked day in and day out on "hot" interstate engines—or "live" engines—ready for use and actually used immediately thereafter which was admitted by the petitioner in its brief herein in the N. Y. Appellate Division, pp. 20-21.

Upon all this uncontroverted evidence the respondent conclusively established that at the time of his injury he was engaged as an unskilled laborer at petitioner's maintenance interstate transportation roundhouse in work so closely related to interstate transportation as to be a part of it.

The engine involved in plaintiff's injury was one of the petitioner's Santa Fe type mountain engines used exclusively in its interstate transportation from Maybrook, N. Y. over the mountains to Connecticut and Massachusetts (R., 208, 212). This Santa Fe type was known as 2-10-2, and the particular engine was numbered 3221, and by stipulation herein the petitioner concedes that it was used exclusively for interstate transportation for two years before the plaintiff was injured (R., 224-226) and it is not suggested that it was ever used by defendant for any purpose, except interstate transportation, from the time that it was purchased by petitioner, not only up to the time of plaintiff's injury but up to the trial (R., 367 to 446). It was one of the defendant's interstate transportation engines which came into this roundhouse for maintenance every day (R., 261).

The Federal Statute requires locomotives to undergo a boiler wash every 30 days (R., 209). This particular locomotive had undergone such washes on November 14, 1927; Jan. 23, 1928; Feb. 25, 1928; April 2, 1928; May 8, 1928; June 10, 1928; July 17, 1928; Sept. 5, 1928; Oct. 11, 1928; Nov. 26, 1928; May 3, 1929; June

10, 1929; July 17, 1929, and the one at the time of the accident, Aug. 24, 1929 (R., 263) while being used only in the Maybrook, N. Y.-Connecticut freight service.

A boiler wash takes from 3 to 6 days or more (R., 188). A boiler wash is never made alone but always in conjunction with temporary and minor repairs (R., 188-189) *and at the time of the accident the moving of the wheels was incident to the boiler wash period* (R., 264).

The plaintiff upon this evidence, thus established beyond all dispute both of the following propositions:

(A) Respondent's general work and his work at the time of the injury was that of an unskilled laborer at defendant's maintenance roundhouse and engine terminal at Maybrook, N. Y., where petitioner maintained and repaired, while still in service, its interstate commerce engines; and that therefore the respondent at the time of his injury was necessarily engaged in work so closely related to interstate transportation as to be a part of it.

(B) That at the time the respondent was injured he was engaged in maintaining in efficient condition for effective service one of petitioner's engines exclusively engaged in interstate transportation, which was still in service, and had *not* been withdrawn from service to be deadheaded to petitioner's "back-shop" at Readville, Mass.

Therefore, by reason of the undisputed facts herein, as stated succinctly above under A and B, the respondent at the time of his injury was engaged in work so closely related to interstate transportation as to be a part of it and the Federal Employers' Liability Act applied to his case.

ARGUMENT.

POINT A.

All the facts in this case upon which the question as to whether or not respondent was engaged in work so closely related to interstate transportation as to be a part of it, are undisputed, and thus only a question of law was and is presented, and it appearing conclusively that respondent was injured while so engaged it is immaterial upon which ground it is so held.

The record shows that the trial court held upon this undisputed evidence, as matter of law, that the respondent at the time he was injured was engaged in work so closely related to interstate transportation as to constitute a part of it, and *based this ruling* upon the case of *Law* v. *Illinois Central R. R. Co.*, 208 Fed. 869 (cited and not disapproved in *Industrial Accident Commission* v. *Davis*, 259 U. S. 182) and held that the engine upon which respondent was working was an instrumentality of interstate commerce which was *not withdrawn from service*, but was merely undergoing roundhouse repairs incidental to its statutory boiler wash (R., 242, 245).

The majority opinion of the Court of Appeals (R., 489, 493) held in substance that the respondent was engaged in an interstate transportation plant service, and stated therefore that the respondent was "engaged in interstate transportation or in work so closely related to it as to be practically a part of it" (R., 492) and that therefore, in the opinion of the majority of the court, it was "unnecessary to determine whether at the time of the accident the locomotive being repaired had been

so withdrawn from service that it was not in use in interstate commerce."

Now, as the facts in the case bearing upon both of these propositions are entirely undisputed, it is immaterial upon which ground this court bases its ruling that the federal act applies.

The respondent contends and believes he has proved both propositions, and that the federal act is applicable, first, because at the time the plaintiff was injured he was an essential interstate transportation plant service employee engaged in work so closely related to interstate transportation as to be a part of it; and, second, because he was working on and in connection with one of the defendant's locomotives which at all times was exclusively engaged in interstate transportation, and that it was therefore an interstate transportation instrumentality, and that therefore, necessarily, the federal act applied.

Interstate commerce is never a question for the jury if the essential facts concerning employment are not in dispute, and admit no other inference. (*N. Y. C. R. R. Co.* v. *Porter*, 249 U. S. 168; *So. R. Co.* v. *Puckett*, 244 U. S. 371; *Erie R. R. Co.* v. *Welsh*, 242 U. S. 303; *Pederson* v. *D. L. & W. R. R. Co.*, 229 U. S. 146.)

It is therefore immaterial as to what precise theory the courts below have decided that the respondent was engaged in interstate transportation or work so closely related thereto as to be a part of it, provided the respondent was so engaged at the time of his injury. (*D. L. & W. R. R. Co.* v. *Yurkonis*, 220 Fed. 429, writ of error dismissed, 238 U. S. 439.)

POINT B.

Respondent at the time of his injury was an essential interstate transportation plant service employee, and then and at all times was engaged in servicing and maintaining interstate locomotives, and thus clearly his work was an essential part of interstate transportation.

The facts establishing the above proposition are set forth in detail under the Statement of the Case and Facts in this brief, *supra.*

We may begin the consideration of the proposition stated in the above point by definitely stating some related employments which does not come within the act.

1. All railroad employes who work in general railroad repair and reconstruction shops or so-called "backshops" upon locomotives, cars and equipment or appliances, which have been in interstate transportation, *or* which have been withdrawn from interstate transportation and may or may not be returned thereto, and which are thus definitely out of service, are not engaged in interstate transportaton, and do not come under the Federal Employers' Liablity Act, *even though they are engaged in interstate commerce as distinguished from interstate transportation;* and such was the situation in the case of *Shanks* v. *D. L. & W. R. R. Co.*, 239 U. S. 556, which is cited so frequently, and which is referred to in the petitioner's brief and in the case of *C. & N. W. R. Co.* v. *Bolle*, decided by this Court November 23, 1931 and the facts in the instant case definitely show the basic and fundamental difference between the instant case and the *Shanks* case, because here, as in the *Shanks* case, this petitioner rail-

road company also maintained at Readville, Mass., a "back-shop" for general or heavy repairs and overhauling of locomotives and equipment which was definitely taken out of service to be overhauled and completely repaired, which, after being inspected, would be placed in storage before it was returned to service.

2. All employees whose usual general work is connected with interstate commerce but not interstate transportation, such as janitors and stationary engineers and fireman in station buildings, etc., are not within the scope of the federal act, even though at times, but not at the time of the injury, they may be doing work which is directly connected with interstate transportation.

Such class of employees is covered by the case of *C. & N. W. R. Co.* v. *Bolle, supra*, where Bolle was generally employed to fire a stationary engine used to generate steam for the purpose of heating the passenger depot, baggage room and other structures at a railroad station.

We think it may be positively stated that it is certain that this respondent's case does not come within either one of the above classes, but does come within that class of cases where the employee is at all times engaged in interstate transportation maintenance roundhouse work, and particularly engaged in working on interstate instrumentalities. This class of cases is typified by *New York Central Railroad Co.* v. *Marcone*, 281 U. S. 345, where the Court said:

> "Decedent was employed in the roundhouse. His duty was to fill the grease cups and pack the journal boxes of engines while in the roundhouse for inspection * * *. He worked on fourteen engines, * * *.
>
> "The engine, No. 3835, on which deceased last worked, was used in hauling interstate trains.

> It was not withdrawn from service * * *. *His presence on the premises* was so closely associated with his employment in interstate commerce as to be an incident of it as to entitle him to the benefit of the Employer's Liability Act. * * *" (Italics are respondent's).

In *Illonardo* v. *Erie R. R. Co.*, 103 N. J. Law 4, the plaintiff was employed as a laborer at defendant's roundhouse used in both interstate and intrastate commerce, and was injured while opening the roundhouse doors to allow a crippled engine to be placed therein, and the Court said:

> "A round-house is as much a part of a railroad company's plant as its ash pit (*Grybowski* v. *Erie R. R. Co.*, 88 N. J. Law, aff'd 89 id. 361) and a person whose employment requires him to assist in opening the doors of a round-house for the admission of locomotives, is as much engaged in maintaining the effectiveness of this part of the railroad company's plant, as is the man whose duties requires him to clean out the ash pit of the company, in order to maintain its effectiveness."

In *Salvo* v. *New York Central R. R. Co.*, 216 N. Y. App. Div. 592, the Court said:

> "The deceased employee was working for the New York Central Railroad Company in its round-house in the City of Rensselaer, and his employment was to clean the fire-boxes of engines. * * *
>
> "The deceased was employed, not to work upon a particular engine, but to clean the fire-boxes of engines as they were brought to the round-house indiscriminately, without regard to whether engaged in interstate or intrastate commerce * * *. His service was really a plant service. Employees of common carriers doing both interstate and intrastate commerce, whose duties are similar to those of the deceased in this case, have

been held to be engaged in interstate commerce." * * *. (See *Scelfo* v. *Buffalo, R. & P. R. Co.*, 211 A. D. 243; *Stone* v. *N. Y. C. R. R. Co.*, 211 A. D. 638, cited in this opinion.)

"Where the services are intimately related to interstate commerce and there is an element of interstate commerce in a traffic or employment it determines the remedy (*Stone* case, *supra*, citing *Phila. & Reading R. Co.* v. *Polk*, 256 U. S. 332, 334; *Erie R. R. Co.* v. *Szary*, 253 id. 86, 89). We do not think that whether or not the engine upon which the deceased was employed when he met his death had been assigned immediately to intertate commerce determines the character of his employment. He was engaged in work so directly connected with interstate commerce and so intimately related thereto and so necessary therefor as not to be distinguished therefrom."

The same conclusion we believe is properly deducible from the opinion of this Court in *Erie R. R. Co.* v. *Collins*, 253 U. S. 77, where the Court correlated the important pertinent cases previously decided upon the subject, and said at pages 82 and 85:

"It can hardly be contended that while plaintiff was engaged in the signal tower he was not engaged in interstate commerce, though he may have, on occasion, signaled the approach or departure of intrastate trains. But it is contended that when he descended from the tower and went to the pumping station he put off an interstate character and took on one of intrastate quality; or, it may be, was divested of both and sank into undesignated employment. *A rather abrupt transition it would seem at first blush, and, if of determining influence, would subject the Employers' Liability Act to rapid changes of application, plaintiff being within it at one point of time and without it at another*,—within it when on the signal tower, but without it when in the pump

> house, though in both places being concerned with trains engaged in interstate commerce." * * *
>
> * * * * * * * * *"
>
> "Plaintiff was assigned to duty in the signal tower and in the pump house, and it was discharged in both on interstate commerce as well as on intrastate commerce, and there was no interval between the commerces that separated the duty, and it comes, therefore, within the indicated test. It may be said, however, that this case is concerned exclusively with what was to be done, and was done, at the pump house. This may be true, but his duty there was performed and the instruments and facilities of it were kept in readiness for use and were used on both commerces as were demanded, and the test of the cases satisfied." (Italics ours.)

In the *Collins* case, *supra*, the defendant had attempted to separate Collins' duty into two characters, one in the signal tower and the other on the way to the pump house and in the pump house, which separation the Court definitely refused to concur in.

The same general doctrine has been applied by this Court in *St. Louis R. R. Co.* v. *Seale*, 229 U. S. 156; *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170, and followed by the New York Court of Appeals in *Knowles* v. *N. Y. N. H. & H. R. R. Co.*, 223 N. Y. 513.

We therefore contend that since the respondent's general daily employment and his so-called specific employment at the time of the injury were both as an unskilled laborer at defendant's maintenance round-house in work so closely related to interstate transportation as to be a part of it that the federal act applies.

POINT C.

At the time the respondent was injured he was working on an interstate transportation instrumentality not withdrawn from service, and therefore the Federal Act applies.

We approach the consideration of this portion of the argument with the stipulated fact (R., 224-226) that engine 3221 for two years previous to the accident had been exclusively engaged in the interstate transportation of freight by the petitioner over a seventy mile branch of the defendant's railroad extending westerly from its main line in the State of Connecticut to its westerly terminal in the State of New York, and the undisputed testimony upon the trial that this particular locomotive was never used in passenger service or interstate transportation of any kind or description, even to the day of the trial, and was at the time of the injury to the respondent undergoing a statutory boiler wash and maintenance repairs which ordinarily took from three to twelve days, and were made at the defendant's Maybrook engine maintenance and service terminal, where only daily running repairs and maintenance repairs in connection with boiler washes were made on this type of engine, approximately every thirty days, and that the petitioner maintained at Readville, Mass., an out-of-service general repair shop [illegible] *where, and only where,* this particular type of locomotive was put out of service approximately every eighteen months, or after it had covered 90,000 miles of road service; there to be [illegible] and then placed in storage until such time as it would be again assigned to service. (As

to this particular locomotive there is no claim made, nor was any attempt made to show that it had ever been placed in storage when at Readville and later sent to another division of the railroad.) It is also undisputed that a little over five months previous to the date of the accident this particular locomotive had been at the general out-of-service repair shops at Readville, Mass., and had been completely overhauled and re-built, and that since such general repairs had had three boiler washes at Maybrook, after it returned to its regular run on March 27, 1929, respectively on May 3, 1929; June 10, 1929; July 17, 1929, and the one at the time of the accident when the boiler wash was begun on August 24, 1929.

A boiler wash is never made alone, but always in conjunction with temporary and running repairs, and at the time of the accident the moving of the wheels was incident to the boiler wash and incidental maintenance repairs (R., 188, 189, 264).

With this undisputed testimony it seems only necessary that we should call the Court's attention to the three applicable cases.

In *Lusk* v. *Bandy*, 76 Okla. 108, it was held that an employee making a boiler wash on a locomotive used exclusively in interstate commerce was engaged in interstate transportation at the time. How did doing work incident to the boiler wash change the character of the employment?

This Court has left the facts in each case to determine the status of the servant as to whether engaged in interstate transportation or otherwise at the time of his injury, but has declined to undertake to announce a fixed rule. (*Industrial Commission* v. *Davis*, 259 U. S. 168.)

In the last-named case Mr. Justice McKenna adds some very material things to the test heretofore laid down by this Court in the *Shanks* case, *supra*. He says:

"The federal act gives redress only for injuries received in interstate commerce. But how determine the commerce? Commerce is movement, and the work and general repair shops of a railroad, and those employed in them, are accessories to that movement, indeed, are necessary to it, but so are all attached to the railroad company, official, clerical or mechanical. *Against such a broad generalization of relation we, however, may instantly pronounce, and successively against lesser ones, until we come to the relation of the employment to the actual operation of the instrumentalities for a distinction between commerce and no commerce. In other words, we are brought to a consideration of degrees,* and the test declared, that the employee at the time of the injury must be engaged in interstate transportation or in work so closely related to it as to be practically a part of it, in order to displace state jurisdiction and make applicable the federal act. *And there is a difference in the instrumentalities. In some, the tracks, bridges and roadbed and equipment in actual use, may be said to have definite character and give it to those employed upon them.* But equipment *out of use, withdrawn for repairs, may or may not partake of that character according to circumstances,* and among the circumstances *is the time taken for repairs—the duration of the withdrawal from use.* Illustrations readily occur. There may be only a placement *upon a side track or in a roundhouse*—the interruption of actual use, and the return to it, *being of varying lengths of time, or there may be a removal to the repair and construction shops, a definite withdrawal from service and placement in new relations;* the relations of a work shop, its employments and employees having cause in the movements that constitute commerce but not being immediate to it.

"*And it is this separation that gives character to the employment, as we have said, as being in or not in commerce.* Such, we think, was the

> situation of the engine in the present case. It was placed in the *shop for general repairs* on December 19, 1918. On February 25, 1919, after work upon it, it was given a trial and it was placed in service on March 4, 1919. The accident occurred on February 1st of that year, the engine at the *time being nearly stripped and dismanteled.* 'It was not interrupted in an interstate haul to be repaired and go on.' *Minneapolis & St. Louis R. Co.* v. *Winters,* 242 U. S. 353, 356 (37 S. Ct. 170, 61 L. Ed. 358, Ann. Cas. 1918B, 54); *Chicago, K. & S. R. Co.* v. *Kindlesparker,* 246 U. S. 657 (38 S. Ct. 425, 62 L. Ed. 925)." (Italics ours.)

It seems that the Court must then have had in mind that an engine could be an instrumentality of interstate commerce, because Mr. Justice McKenna spoke of the duration of the withdrawal from actual use as a consideration, and of the character and the place of making the repairs as material. Surely a locomotive exclusively used in interstate transportation is an instrumentality of such interstate transportation. It furnishes the power by which the commerce is transported interstate. It is just as much of an interstate transportation instrumentality as a bridge or the track. The only difference is that the bridge and the track are fixed in one position. But when a railroad company purchases a special type of locomotive for its interstate transportation, and thus dedicates it to such interstate work, and thereafter uses it exclusively in interstate transportation, it necessarily is one of its prime instrumentalities of interstate transportation. Also recognition was given to the difference between running repairs of a light character made in a roundhouse and a general overhauling in a regular repair shop, where, in the first instance the engine is in the same hands as when it is on its regular run, and in the latter case

where it is placed in new hands under new control when classified and heavy repairs are to be made, thus indicating the withdrawal of the instrumentality from interstate commerce.

This *Davis* case is the last word of the Supreme Court upon the subject, where the Court has found it necessary to write an opinion, but we believe that when this Court denied certiorari in the case of *Oglesby* v. *St. L. & S. F. R. R. Co.*, 318 Mo. 79; 277 U. S. 587; No. 821 October, 1927 Term, it at least gave approval to a construction of the *Davis* case by the Missouri Supreme Court, which, if followed here (and we can see no logical reason why it should not be followed) must require the affirmance of the judgment below.

The case at bar and the *Oglesby* case are identical. In both cases it was stipulated by the attorney representing the respective railroad companies that the engine in question while in use was exclusively used in interstate tansportation. In both cases the territorial location of the place that the repairs were being made, and the regular use of the engine from that place on its regular assigned duties, prohibited anything but interstate transportation. In both cases regular "backshops" for general classified overhauling and construction repairs were maintained for that specific purpose in connection with the particular type of locomotive in question. Both locomotives were built, maintained and equipped solely for freight service of an interstate character. Both engines immediately upon the completion of the round house repairs in question went immediately back into the service from which they had been temporarily withdrawn, and in neither case did the railroad company contend that the engines were to be used for any other purpose.

Thus, the interstate transportation characteristics and the use of the instrumentalities was firmly fixed, and, therefore, the *Oglesby* case, *supra*, and the case at bar are not only identical but both are easily and definitely distinguishable from all of the cases cited and referred to by the appellant, and come completely within the test laid down by this Court in the opinion written by Mr. Justice McKenna in *Industrial Commission* v. *Davis, supra.*

We are fully aware that this Court has said in the case of *Minneapolis & St. L. R. Co.* v. *Winters*, 242 U. S. 353, that "an engine as such is not permanently devoted to any kind of traffic * * *," but we earnestly suggest that while such statement may be correct as to many locomotives used indiscriminately in both classes of commerce it certainly cannot be controlling and decisive, and undoubtedly was never intended to be controlling and decisive, of a case such as this where the evidence in the case under consideration definitely establishes by stipulation that the locomotive was never used in intrastate transportation before the accident and the railroad company makes no claim that it had ever any intention of changing the exclusive use of the locomotive in freight interstate transportation to intrastate transportation, or mixed transportation.

Therein lies the distinction between all other cases, except the *Oglesby* case, *supra*, and the case at bar; and the wisdom and practical ability of the *Oglesby* decision, we believe, were the grounds for this Court's refusing to review the Oglesby decision when the Missouri Court pointed out the justice of its decision. (See *Oglesby* v. *St. L. & S. F. R. R. Co.*, 318 Mo. 79, certiorari denied 277 U. S. 587, October Term, 1927.)

Please also see:
DAVIS VS. AKINS, 109 Kan. 474;
199 Pac. 464; cert.d'n'd;
257 U.S. 658

The petitioner continually refers in its brief to locomotive 3221 as having been withdrawn from service. There is no evidence in the recod that shows any withdrawal either by written order, or any identification on any of the daily engine movement log records found between pages 366 and 466. Whereas petitioner's locomotive inspector, Quick, testified:

> "Whenever engines of the type of 3221 were to be completely dismantled, they were taken to Reedville, and no complete dismantlings were made at Maybrook" (R., 189).

While the general foreman, Jennings, testified:

> "These repairs on 3221 were not exceptional. As a matter of fact, there were other engines in for boiler washes that are heavier" (R., 265).

Whereas, defendant's log service records, introduced by the respondent as his Exhibit 15B *at pages* 404, 406, 412, 414, *show that when engines were to be taken out of service they were marked "For shop" and this is very significant for the engines therein referred to are of the same type, and no where does it appear that when this boiler wash was commenced on August* 24, 1929, *that the defendant or any of its employees had any idea that locomotive* 3221 *was out of service.*

Conclusion.

We therefore respectfully submit that the judgment of the Court of Appeals of the State of New York should be affirmed and the writ of certiorari dismissed on either or both grounds, (1) that respondent was engaged in a plant service in work so closely connected with interstate transportation as to be a part of it, or

(2) was engaged in the performance of work on an instrumentality of interstate transportation not withdrawn from such service.

Respectfully submitted,

THOMAS J. O'NEILL,
Counsel for Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
LEONARD F. FISH,
Of Counsel.

FILE COPY

JAN 14 193

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. 263.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

against

CLARENCE BEZUE,

Respondent.

Respondent's Supplemental Brief Filed by Special Permission of the Court.

THOMAS J. O'NEILL,
Counsel for Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
LEONARD F. FISH,
Of Counsel.

CHARLES WATSON RUSSELL, Printer

TABLE OF CASES.

	PAGE
Chicago & Eastern Illinois R. R. Co. *v.* Industrial Commission, Joe Thomas, ... U. S. ..., decided Jan. 4, 1932	1, 8
Chicago & N. W. R. R. Co. *v.* Bolle, 76 L. Ed. 90	5
Chicago, B. & Q. R. R. Co. *v.* Harrington, 241 U. S. 177	5
Erie R. R. Co. *v.* Collins, 253 U. S. 77	1, 4
Erie R. R. Co. *v.* Szary, 253 U. S. 86	1, 5
Erie R. R. Co. *v.* Winfield, 244 U. S. 170	5
New York Central R. R. Co. *v.* Marcone, 281 U. S. 345	3, 6
Oglesby *v.* St. L. & S. F. R. R. Co., 318 Mo. 79; 277 U. S. 587	4
Shanks *v.* D. L. & W. R. R. Co., 239 U. S. 556	5

Supreme Court of the United States

OCTOBER TERM, 1931.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Petitioner, AGAINST CLARENCE BEZUE, Respondent.	No. 263.

Respondent's Supplemental Brief Filed by Special Permission of the Court.

When this cause was argued on January 7th last, the Chief Justice informed counsel that the *Collins* and *Szary* cases had been overruled by the Court's decision in *Chicago & Eastern Illinois R. R. Co.* v. *Industrial Commission of Illinois and Joe Thomas*, filed on Monday, January 4th. After the argument counsel received from the clerk a copy of the said opinion, and thereafter respondent's counsel requested the Court, through the Chief Justice, for permission to file this supplemental brief, which was granted.

We will endeavor to confine this brief to an effort to show that the overruling of the *Collins* case, 253 U. S. 77, and the *Szary* case, 253 U. S. 86, does not require or justify the reversal of this judgment.

We wish at once to impress upon the Court that the facts with reference to respondent's work are not correctly stated in the majority opinion of the New York

Court of Appeals, in the first paragraph of page 490 of this Record. The actual facts are as follows:

Respondent was in petitioner's employ for about a year before he was injured (R., 105, 129), the first eight months as an engine wiper (R., 130), and the last four months exclusively working on locomotives, ninety to ninety-five per cent. of which were locomotives exclusively engaged in interstate transportation (R., 130, 217, 264; Plaintiff's Exhibits 15a, b and c, R., 366, 446). The testimony of the witness Jenkins explains the aforesaid exhibits (R., 210, 211, 212, 217, 227, 228, 229, 230, 231). Respondent worked on and in connection with these interstate locomotives, using a portable truck with crane attached (R., 130) solely in and about the roundhouse. Every day he worked on many of these interstate locomotives going from one to another (R., 106-111), and aiding with his truck and by hand in making all kinds of innumerable adjustments on interstate engines in the roundhouse for boiler washes and repairs and adjustments, which were always made incidental to boiler washes (R., 108-111 and 119). Very frequently heavier maintenance repairs were made on these locomotives during boiler washes than the work that was being done on this locomotive at the time of respondent's injury (R., 265). *The respondent was not assigned to any yard work or general work in the maintenance of the roundhouse itself. He never did any window cleaning or anything of that kind, and the reference to such work in the majority opinion of the New York Court of Appeals is not with reference to the particular work of the respondent, but to the general work of the unskilled labor gang* (R., 261), and respondent for four months before he was injured was not in such general gang, but was paid an increased wage and classified as a truck operator, operating a truck which he used every day in working on and in connection with all of

these interstate locomotives in and about this roundhouse (R., 130). *There were only two men in this roundhouse who did this kind of work* (R., 149), so this case does not include within the scope of the Federal Act all this unskilled labor gang, but merely calls for respondent's inclusion in the same class as passed upon by this Court in *New York Central R. R. Co.* v. *Marcone,* 281 U. S. 345.

A boiler wash is never made alone but always in conjunction with temporary and minor repairs (R., 188-189), and the movement of the wheels at the time of the accident was incidental to this boiler wash. The record shows as follows:

> "*By the Court:*
>
> Q. The boiler wash period was substantially monthly? A. Yes, sir.
>
> Q. And at the time in question the moving of these wheels was a part of the monthly repairs which was incident to the boiler wash period? A. Yes, sir" (R. 264).

The petitioner maintains in Readville, Mass., a back-shop for complete out-of-service overhauling. This type or group of locomotives, when such complete overhauling is needed, is deadheaded from Maybrook to Readville and put out of service.

The record, and particularly the exhibits, show that this type of locomotive is never put out of service while undergoing boiler washes or repairs at the Maybrook terminal, and the exhibits do not indicate that any of the petitioner's employees or foremen ever marked or recorded them as being out of service while at the Maybrook terminal, and the record shows affirmatively that if at any time a locomotive was found which needed these heavy back-shop repairs then the locomotive was marked "For shop," and sent to Readville

(R., 213, 264, 406, 412, 414). We take it that in deciding this case the Court will decide what constitutes a locomotive being out of service as based upon this evidence and the practice of the petitioner itself.

So the fact in this case is that it can not possibly be said that these interstate locomotives of this type undergoing boiler washes and repairs incident thereto were ever considered by the railroad company as out of service until they were sent to Readville, and the Respondent's Exhibits 14a, b and c (R., 362-365) show the much heavier repairs that were made at this backshop in Readville as distinguished from the repairs incidental to the boiler washes which were made at the Maybrook terminal.

It may be accurate to say that all of these locomotives while in the roundhouse were not in use, but they certainly were not out of service. They are also not in use when in the roundhouse merely for the purpose of inspection or greasing and oiling and incidental repairs between runs, but they are not out of service, and a man oiling and greasing such locomotives is within the Federal Employer's Liability Act. (See *Marcone* case, *supra*).

The facts in this case are quite similar to the facts in *Oglesby* v. *St. L. & S. F. R. R. Co.*, 318 Mo. 79; 277 U. S. 587, which is referred to at length at pages 20-21 of respondent's main brief, and we request the Court to examine this decision.

The case of *Erie R. R. Co.* v. *Collins*, 253 U. S. 77, recently overruled by this Court in *Chicago & Eastern Illinois R. R. Co.* v. *Industrial Commission*, decided January 4, 1932, is readily distinguishable from the case at bar.

The great distinction between the *Collins* case and the one at bar, is that, although Collins was generally

engaged in interstate transportation, he had at the time of his injury left the scene of his interstate duties and was doing work entirely unrelated and different from such interstate duties.

It was never claimed that the *Szary* case was applicable to the case at bar.

The case of *Chicago & Eastern Illinois R. R. Co.* v. *Industrial Commission, etc., supra,* of course has no relation to the case at bar except insofar as it overrules the *Collins* and *Szary* cases.

The Thomas case is in the same group, wherein we find *Shanks* v. *D. L. & W. R. R. Co.*, 239 U. S. 556; *Chicago & N. W. R. R.* v. *Bolle*, 76 L. Ed. 90, decided November 23, 1931; *Chicago, B. & Q. R. R. Co.* v. *Harrington*, 241 U. S. 177.

The case at bar comes within the *Marcone* and the *Oglesby* cases, *supra,* and is alike in principle to the case of *Erie R. R. Co.* v. *Winfield,* 244 U. S. 170. In the *Winfield* case, Winfield was in charge of a switch engine and was killed while leaving the yards after his day's work. It was not even shown that his last movement of the engine was in the switching of interstate cars, but it was held that his status was that of an interstate transportation employee because, although he was leaving the yards after his day's work, he had been all day using his locomotive switching both interstate and intrastate cars.

In the case at bar Bezue was engaged exclusively in the repair and keeping in condition locomotives as previously pointed out. His status, therefore, in principle, was the same as the status of Winfield. Winfield was switching cars sometimes interstate and sometimes intrastate. Bezue was assisting in minor repairs and keeping the locomotives in running and serviceable condition and nothing else. His work took him from locomotive to locomotive. He had not been engaged upon the locomo-

tive in question until about two hours before the accident *and even during this time not continuously* (R., 136-137). The engine was in the roundhouse for a boiler wash and incidental repairs. The fact that the driving wheels were removed to clean the bushings did not withdraw the locomotive from its status as an instrumentality of interstate transportation any more than if one bolt had been removed. As heretofore stated, the statement contained in the opinion of the Court of Appeals that Bezue did other work around the roundhouse, such as washing windows, is erroneous. Bezue himself testified that his sole work for the last three or four months before his injury was upon locomotives, and no one contradicted him. The expression in the Court's opinion was inadvertent and arose by reason of the testimony of one of the defendant's witnesses who generally described the duties of the laborers in the unskilled labor gang, *but Bezue for three months was no longer in that class,* and if he ever performed such work when first employed,—and there is no evidence to that effect, his testimony merely being that he first was an engine wiper—he had long since done nothing except to keep locomotives in repair and running condition.

It is therefore submitted that the status of Bezue was that of interstate transportation employment; and, further, that, irrespective of his general status, the locomotive that he was working in connection with was engaged exclusively in interstate transportation and had not been withdrawn from service at all—any more than all the other locomotives which came into the roundhouse daily.

Respondent's counsel also submits that the case at bar comes within the case of *New York Central R. R. Co.* v. *Marcone,* 281 U. S. 345. Marcone was working in a roundhouse upon locomotives the same as the respondent in the case at bar. He had worked upon

many locomotives on the night in question. The last one upon which he worked, No. 3835, was an interstate locomotive but it is submitted first, that the character of the last locomotive is not the controlling factor any more than the last switching movement in the *Winfield* case, *supra,* was the controlling factor and hence, under the *Marcone* case and *Winfield* case, the respondent was engaged in interstate transportation. In fact the language of this Court's opinion in the *Marcone* case can be directly applied to the case at bar:

> "*His presence on the premises* was so closely associated with his employment in interstate commerce as to be an incident of it as to entitle him to the benefit of the Employer's Liability Act" (Italics ours).

The Judgment Should Be Affirmed.

Respectfully submitted,

THOMAS J. O'NEILL,
Counsel for Respondent.

THOMAS J. O'NEILL,
CHARLES D. LEWIS,
LEONARD F. FISH,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 263.—October Term, 1931.

The New York, New Haven and Hartford Railroad Company, Petitioner, *vs.* Clarence Bezue. } On Writ of Certiorari to the Supreme Court of the State of New York.

[January 25, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

The respondent was injured while in the employ of petitioner, an interstate carrier. He brought suit under the Federal Employers' Liability Act in the Supreme Court of New York and recovered a judgment which was affirmed by the Appellate Division and the Court of Appeals.* Petitioner urges that at the time of respondent's injury his work was not in interstate commerce within the intendment of the statute.

At Maybrook, New York, the westerly terminus of a branch of the railroad, petitioner maintains a roundhouse, a machine shop, a carpenter shop, and a so-called hoist building containing four tracks with two pits, a hoist of large capacity for raising engines, a lathe for repairing driving wheels, apparatus for electric welding, tool room, and electrical shop. These facilities are used largely for servicing and repairing locomotives engaged in interstate transportation. The respondent had been employed at this terminal for about a year, at first as an engine wiper; later, and at the time of the accident, as a member of a general unskilled labor gang. His principal work was the operation of an electric truck with which he transported materials from one portion of the plant to another. By means of this truck, and sometimes without it, he was accustomed to assist in various minor repairs to locomotives brought into the terminal, such as lifting driving rods, pumps, journal boxes, draw bars, assisting in greasing, or greasing, en-

*232 N. Y. App. Div. 840; 256 N. Y. 427.

gines, and other work of a similar nature. On the morning of September 2, 1929, he was not using the truck, but pursuant to an order of the foreman of the gang joined other workmen in removing a pair of main driving wheels from a lathe in the hoist building and rolling them along the tracks in the yard to an engine pit where they were to be installed in a locomotive which had arrived at the terminal August 23, and had been set aside for the customary boiler-wash given all engines every thirty days. Preparatory to the boiler-wash an inspection was made and orders were issued for certain work, which included the removal of the main driving wheels and shifting them to the hoist shop so that the journal might be turned, the transfer of several parts to the machine shop, the separation of the jacket from the fire-box, the replacement of some four hundred seventeen leaking bolts, the renewal of bushings, and other items requiring skilled labor. The fire was dumped, the main driving wheels and other portions needing attention were removed, and the engine was left inert and incapable of locomotion.

The boiler-wash and repairs consumed twelve days. On the ninth day, the turning of the journal on the main drivers having been completed, the respondent, on orders of his foreman, joined others of the unskilled labor gang in removing the main driving wheels from the lathe in the hoist shop, placing them upon a track, and pushing them by hand to the turntable, which was then connected with another track onto which the men pushed the wheels preparatory to moving them to a pit in the roundhouse where they could be placed under the locomotive. During this work respondent was injured, as has been found, by the negligence of the foreman in removing a block from under the wheels.

The state court held that the terminal facilities in which respondent worked constitute a part of the railroad's system necessary to the operation of the road and to the conduct of interstate commerce; that the fact that some work is there done on locomotives engaged in intrastate commerce does not deprive the establishment of its character as an essential instrumentality of interstate commerce; that the respondent was engaged in a "plant service", and worked indiscriminately upon engines engaged in interstate and intrastate commerce. The conclusion was that the nature and purpose of the plant warranted characterization of

all respondent's work, of whatever nature, as in interstate commerce.

The test thus applied is broader than our decisions justify. All work performed in railroad employment may, in a sense, be said to be necessary to the operation of the road. The business could not be conducted without repair shop employees, clerks, janitors, mechanics, and those who operate all manner of appliances not directly or intimately concerned with interstate transportation as such, or with facilities actually used therein. But we have held that the mere fact of employment does not bring such employees within the Act. *Del. Lack. & W. R. R.* v. *Yurkonis,* 238 U. S. 439; *Chicago, B. & Q. R. R.* v. *Harrington,* 241 U. S. 177; *Illinois C. R. R. Co.* v. *Cousins,* 241 U. S. 641; *New York Central R. R. Co.* v. *White,* 243 U. S. 188, 192; *Industrial Accident Commn.* v. *Davis,* 259 U. S. 182, 187; *Chicago & N. W. Ry. Co.* v. *Bolle* (decided November 23, 1931).

The criterion of applicability of the statute is the employee's occupation at the time of his injury in interstate transportation or work so closely related thereto as to be practically a part of it. *Shanks* v. *Del. Lack. & Western R. R.,* 239 U. S. 556, 558; *Chicago & E. I. R. R. Co.* v. *Industrial Commn.* (decided January 4, 1932). Under the circumstances of this case, whether respondent is within the Act must be decided not by reference to the kind of plant in which he worked, or the character of labor he usually performed, but by determining whether the locomotive in question was, at the time of the accident, in use in interstate transportation or had been taken out of it. The length of the period during which the locomotive was withdrawn from service and the extent of the repairs bring the case within the principle announced in *Industrial Accident Commn.* v. *Davis, supra,* and *Minneapolis & St. Louis R. Co.* v. *Winters,* 242 U. S. 353, stamp the engine as no longer an instrumentality of or intimately connected with interstate activity, and distinguish such cases as *New York Cent. R. Co.* v. *Marcone,* 281 U. S. 345, where the injured employee was oiling a locomotive which had shortly before entered the roundhouse after completing an interstate run.

Respondent endeavors to support the claim that here the instrumentality had not been taken out of interstate commerce, by reference to the practice of petitioner, which is that work, some-

times greater and often less in amount than in this case, is done at Maybrook in connection with the monthly boiler-wash; whereas after a locomotive has run thirty-five thousand miles, or eighteen months, it is marked for out-of-service repairs and is sent to petitioner's general repair shop at Readville, Massachusetts. The argument is that the railroad company thus recognizes that such work as is done at Maybrook in conjunction with boiler-washing is incidental and does not take the engine out of service.

We do not think this custom warrants a disregard of the proved facts, and the adoption of an artificial classification of the locomotive as one in service at the time of respondent's injury. The judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.